



# Implementing Domestic Workers' Rights Laws

## A Comparative Analysis of São Paulo and New York City

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The views expressed in this document are those of the authors and do not reflect the official position of UN Women or the School of International and Public Affairs.

## Executive Summary

Over the course of five months, the SIPA Capstone team set out to evaluate the implementation of relatively recent laws to protect domestic workers, comparing efforts in New York City and São Paulo. In that time, we conducted 46 interviews including two focus groups with domestic workers, speaking with 10 NGOs, 13 experts, government officials, and academics, and 4 employers/employer groups.

Whereas the laws themselves represent a huge achievement in the fight to formalize domestic work, our findings reveal a wide chasm between the rights as written, and their intended effect. In both New York and São Paulo the enforcement system is complaint-driven, which puts the onus on workers to report violations of the law. This is problematic for several reasons, not least of which is that authorities are under-resourced, leaving them ill equipped to conduct affirmative investigations or proper outreach. Domestic workers are also loath to file a complaint because they mostly work in isolation where they lack anonymity. Concerns about immigration status compound the fears of an already vulnerable workforce. In the event that a worker actually decides to seek recourse through the justice system, it could take years before she sees restitution.

Awareness about the law also varies. Although knowledge is widespread in Brazil, it has also led to under-employment as employers look to circumvent responsibility. Conversely, awareness is very low in New York, but some employers have actually organized to meet their new obligations.

In the absence of robust state enforcement, workers' organizations have stepped up to fill the gap by running legal clinics, raising awareness, and even mediating disputes between workers and employers. Organizations have been relatively successful, but their ability to deliver services is limited and they struggle to sustain themselves.

### Primary Recommendations

This report makes four recommendations toward a better framework for domestic workers' rights:

1. **Craft stronger laws with more protections and greater coverage.** Domestic workers should be entitled to a living wage, hours worked, overtime, maternity leave, paid sick leave and/or vacation, notice of termination, severance pay, and assistance with acquiring health insurance.
2. **Build institutional capacity by providing enforcement bodies with adequate funding to publicize and implement the laws.** Governments should additionally fund and collaborate with workers' organizations that have credibility and grassroots infrastructure to help build greater awareness.
3. **Align the interests of employers and domestic workers to identify more effective penalties and incentives.** Local governments should consider a municipal tax credit for employers. This will not only incentivize employers to comply with the law, but it will also create an official record of employment for the state. Tax authorities can share this data with labor departments to compile a formal database.
4. **Support the development of partnerships and tools to formalize the domestic work industry.** Both workers and employers struggle to process their rights and responsibilities. Tools and technology can help prepare contracts, determine and verify hours worked, evaluate real work, and improve working relationships.

Our research makes clear that domestic workers still struggle to have their work recognized as "real work," worthy of legal protection and respect. However, there is a clear pathway forward to improve implementation so that workers can claim their rights fully and become a formal workforce.

## I. Introduction

The demand for domestic workers has exploded in the last 20 years, growing nearly 60% since 1995. Rapid economic development in Asia and Latin America has created a burgeoning paid care economy, drawing migrants from the Global South in search of better wages.<sup>1</sup> As more women enter the workforce and find themselves unable to meet their families' care needs outside working hours, micro-level care deficits emerge within households. Hiring a domestic worker to support with childcare, eldercare, cooking, and cleaning is a method people of a wide range of financial means deploy to fill the gap.<sup>2</sup> Yet domestic workers represent a poorly regulated labor market of 53 million people, 83% of whom are women.<sup>3</sup> Overlapping issues of gender, race, class, isolation, and legal status intersect to produce a uniquely vulnerable workforce. As a result the care economy has enormous implications for an international gender mainstreaming agenda as a development issue.

Recent laws passed in New York State in 2010 (Domestic Workers' Bill of Rights) and in Brazil in 2013 (amendment to Article 7 of the Constitution) attempt to provide a regulatory framework for increased protection of workers by formalizing domestic work. However, there is little data as to the practical application or effectiveness of these laws and whether or not they are achieving their intended result. The goal of this research report is to help bridge that gap by evaluating the implementation of these laws and their impact on the lives and working conditions of domestic workers. It explores the implementation challenges faced by the administering authorities and relevant non-governmental organizations (NGOs), as well as the ability of domestic workers and employers to access the rights articulated in the law. Thus, this report sets out to advance our understanding of the extent to which laws designed to protect domestic workers are achieving their intended outcome.

To answer this question, the report provides a comparative case study and analysis of São Paulo and New York City, concluding with recommendations for improvement. It outlines a theoretical framework and political context, combined with qualitative and some quantitative research to understand the contrast between law and implementation.

The report focuses on the implementation challenges at the municipal level, as cities are often the primary point of contact for service delivery. In particular, New York City and São Paulo represent cities of similar size with large labor markets for domestic work. Both are subject to relatively new laws to protect domestic workers, which have yet to be evaluated, making them valuable points of comparison.

The report is organized as follows:

The remainder of Section I provides an introduction to and theoretical framework for domestic

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<sup>1</sup> International Labor Office, "Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection," Report (2013).

<sup>2</sup> Valeria Esquivel, (2008) "A "macro" view on equal sharing of responsibilities between women and men" Paper presented at Expert Group Meeting on "Equal sharing of responsibilities between women and men, including care-giving in the context of HIV/AIDS" United Nations Office at Geneva, 6-9 October, 2008 (EGM/ESOR/2008/EP.8).

<sup>3</sup> International Labor Office, "Domestic Workers across the World Global and Regional Statistics and the Extent of Legal Protection," Report (2013).

work, outlining the historic and legal context for the laws. Section II explains our research methodology and identifies the actors referenced throughout the report. Section III and IV provide a detailed case study of São Paulo and New York City respectively, broken down into subsections to provide a snapshot of domestic workers, the breakdown of protections, discrimination and challenges, employer perspectives, implementation, and gap analysis. Section V is a comparative analysis and discussion of our findings. Section VI concludes the report with recommendations for improvement.

## Background

In 2011, the International Labor Organization (ILO) passed Convention 189, outlining domestic workers' rights, including a safe work environment, fair treatment at work, and the right to a fair contract.<sup>4</sup> Defined as work performed in the household within an employment relationship,<sup>5</sup> domestic work encompasses child-care, house cleaning, and elder care. It is the paid work of social reproduction.<sup>6</sup>

Since establishing Convention 189, 17 countries<sup>7</sup> have ratified it, and 11 countries have passed domestic worker protection laws, including Argentina, Bahrain, Brazil, India, Italy, Nicaragua, the Philippines, Spain, Singapore, Thailand, and Venezuela. Although the United States is not a party to the Convention, New York State has established the Domestic Workers' Bill of Rights.

Despite progress, domestic workers continue to face unique constraints to the full realization of their rights. Because of the home-based nature of the work environment, domestic workers are isolated from each other and do not share a common employer. This makes them ineligible for collective bargaining rights, and poses a practical hurdle to organizing. It also leaves them prone to physical, emotional and sexual abuse. In addition, employers often fail to recognize domestic workers as employees, and think of them "like family," leading to the impression that domestic work is not real work.

The traditionally gendered nature of care work, in which women perform care within the unpaid context of the family, compounds this notion. On average, women spend between two and ten times more on care work than men,<sup>8</sup> engaged in the "face-to-face activities that strengthen the physical health and safety, and the physical, cognitive or emotional skills of the care recipient."<sup>9</sup> Although integral to economic advancement, care work is not reflected in measures of material production like Gross Domestic Product (GDP). For example, Suh and Folbre estimate that the

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<sup>4</sup> Celia Mather, "Domestic Workers: Their Time Now," *International Union Rights* 17: 4, (2010): 17-19.

<sup>5</sup> Art 1 ILO Convention 189 (2013).

<sup>6</sup> "Social reproduction" is broadly defined as the unpaid care work women perform to meet the needs of family or individuals. Nancy Folbre, "Measuring Care: Gender, Empowerment, and the Care Economy," *Journal of Human Development* 7: 2 (2006) 183-199.

<sup>7</sup> Argentina, Bolivia, Colombia, Costa Rica, Ecuador, Finland, Germany, Guyana, Ireland, Italy, Mauritius, Nicaragua, Paraguay, Philippines, South Africa, Switzerland, and Uruguay.

<sup>8</sup> Debbie Budlender, "Statistical Evidence on Care and Non-care Work Across Six Countries," *Gender and Development Programme Paper No. 4*, Geneva: United Nations Research Institute for Social Development (2008).

<sup>9</sup> Valeria Esquivel "What is a transformative approach to care, and why do we need it?" *Gender & Development*, 22:3, (2014) 427.

value of unpaid care work in the United States was \$3.2 trillion in 2012, approximately 20% of GDP.<sup>10</sup> The disproportionate social expectations placed on women for *unpaid* care work, contributes to the misconception that domestic work is an extension of female gender roles. The Special Rapporteur on Extreme Poverty and Human Rights has expressed concern that unpaid care work curtails the enjoyment of economic, social, and therefore human rights of women in poverty.<sup>11</sup>

In the broader context, as more women enter the workforce and find they are unable to meet their families' care needs outside working hours, care deficits emerge within households.<sup>12</sup> Factors such as the transformation of family structures means that grandmothers and aunts are not sufficiently close to provide the unpaid care work previous generations of women could have expected from her extended family.<sup>13</sup> There is also an absence of family friendly public policy around the world.<sup>14</sup> Hiring a domestic worker to support with childcare, eldercare, cooking, and cleaning is a method people of a wide range of financial means deploy to fill the gap.<sup>15</sup> This, in turn, creates care deficits in the homes of domestic workers and what has become known as "care chains" in which domestic workers seek family, community, or paid solutions to provide the same care services they conduct to make their living in others' homes. Care chains take on a global dimension when women cross borders to undertake domestic work.<sup>16</sup>

Domestic workers often come from historically disadvantaged groups: ethnic and racial minorities, immigrant communities,<sup>17</sup> and have fewer than average years of education. These factors contribute to the low monetary value placed on care services around the world.<sup>18</sup> Race is also a factor that diminishes full recognition of domestic workers as a formal labor-force. The history of domestic work is intimately tied to the legacy of slavery,<sup>19</sup> relegating darker skinned women to a "naturally" subservient position in the home. This inequality plays out in both subtle and overt ways as domestic workers struggle for respect.

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<sup>10</sup> Jooyeoun Suh and Nancy Folbre, "Valuing Unpaid Child Care in the U.S.: A Prototype Satellite Account Using the American Time Use Survey", 2014, Background paper for Progress of the World's Women 2015–2016, UN Women, New York.

<sup>11</sup> Magdalena Sepúlveda Carmona, Report of the Special Rapporteur on Extreme Poverty and Human Rights, Report to the UN General Assembly, (A/68/293), 2013.

<sup>12</sup> Valeria Esquivel "What is a transformative approach to care, and why do we need it?" *Gender & Development*, 22:3, (2014).

<sup>13</sup> Manuela Tomei, "Decent Work for Domestic Workers: An Achievable Goal or Wishful Thinking?", Sangheon Lee and Deirdre McCann (Eds), *Regulating for Decent Work: New Directions in Labour Market Regulation* (Geneva: ILO and Palgrave Macmillan, 2011).

<sup>14</sup> Ibid.

<sup>15</sup> Valeria Esquivel "What is a transformative approach to care, and why do we need it?" *Gender & Development*, 22:3, (2014).

<sup>16</sup> Allison J Petrozziello, *Gender on the Move: Working on the migration-development nexus from a gender perspective*, United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), (2013)

<sup>17</sup> Although this is not the case in São Paulo.

<sup>18</sup> Manuela Tomei, "Decent Work for Domestic Workers: An Achievable Goal or Wishful Thinking?", Sangheon Lee and Deirdre McCann (Eds), *Regulating for Decent Work: New Directions in Labour Market Regulation* (Geneva: ILO and Palgrave Macmillan, 2011).

<sup>19</sup> Linda Burnham and Nik Theodore, *Home Economics: The Invisible and Unregulated World of Domestic Work* (New York: National Domestic Workers United, 2012).

## The Laws

New York State is the first state in the United States to pass a law increasing protections for domestic workers, and Brazil is the second country in Latin America, after Venezuela, to do the same. In both contexts, domestic workers had been previously excluded by name from existing labor protections.<sup>20</sup> However, the details of the respective laws, and corresponding enforcement mechanisms are quite different. Brazil has a robust framework of existing labor protections that Article 7 mostly extends to domestic workers. In New York State, the Domestic Workers’ Bill of Rights is a unique and freestanding set of rights, requiring a more dramatic legal shift. Although workers in both New York and Brazil are excluded from collective bargaining rights, worker organizations in Brazil have successfully partnered with labor unions to help secure their rights. In contrast, the main umbrella organization in New York, Domestic Workers United, is unaffiliated with a union. This has significant ramifications for how domestic workers are able to organize, and the process of formalization itself. Table 1 below describes the similarities and difference between the laws in New York State and Brazil in more depth.

**Table 1: Comparison of Legal Protections in New York State and Brazil**

Legal Protections	
New York State, United States	Brazil
<i>“New York State Domestic Worker Bill of Rights”</i>	<i>“Article 7 Amendments of Brazil Constitution”</i>
<ul style="list-style-type: none"> <li>• Overtime pay</li> <li>• A day or rest every seven days</li> <li>• Three paid rest days per year</li> <li>• Protection under New York State Human Rights Law</li> </ul>	<ul style="list-style-type: none"> <li>• Eight-hour work day</li> <li>• A maximum of 44 hours work per week</li> <li>• The right to the minimum wage</li> <li>• Lunch break</li> </ul>
<p><b>Further examination:</b></p> <ul style="list-style-type: none"> <li>• As a condition of the Domestic Worker Bill of Rights, a feasibility study was commissioned by the New York State Department of Labor to explore potential frameworks for collective bargaining</li> <li>• Domestic workers are still advocating for the inclusion of severance pay, advance notice of termination, and sick days as protections within the Bill of Rights</li> </ul>	<p><b>Further examination:</b></p> <p>The following elements of the Article 7 amendments are still awaiting approval:</p> <ul style="list-style-type: none"> <li>• Fundo de Garantia do Tempo de Serviço (FGTS), a government severance fund into which an employer must pay 8% of their employee’s total salary each month</li> <li>• A reduction of social security contributions from 12% to 8%</li> <li>• How many months of severance pay workers are entitled to if they are terminated</li> <li>• Law only protects people who work more than three days a week in the same home</li> </ul>
Omitted Protections Available to Other Workers	
New York State, United States	Brazil
<ul style="list-style-type: none"> <li>• Domestic workers are exempt from the NLRA and SERA, which guarantee workers the right to collective bargaining</li> <li>• Excluded from the protections of the Occupational Safety and Health Act (OSHA)</li> </ul>	<ul style="list-style-type: none"> <li>• Fundo de Garantia do Tempo de Serviço (FGTS) (see above)</li> <li>• Severance pay and social security pay (see above)</li> </ul>

<sup>20</sup> Harmony Goldberg, *Our Day Has Finally Come: Domestic Worker Organizing in New York City*. Dissertation and Thesis. CUNY Graduate Center, 2014. < <http://works.gc.cuny.edu/etd/422>>.

A direct comparison of the laws themselves further reveals these differences in the labor history and political culture.

In New York, the Domestic Workers' Bill of Rights guarantees a minimum wage, overtime pay, a day of rest every seven days, three paid rest days per year, and protection under the New York State Human Rights Law. Although severance pay and notice of termination were in the original bill, in addition to paid holidays, they were cut from the final draft. The law protects workers regardless of immigration status, a particular concern in New York where over 90% of the approximately 120,000 – 240,000 domestic workers are international migrants.<sup>21</sup>

The enforcement system is entirely complaint-driven, with no affirmative auditing, outreach, or inspections. Domestic workers can report violations of the law to the New York State Department of Labor (DOL), which investigates their claim. The DOL does not have a fine structure for non-compliance, and the most domestic workers can receive is restitution for unpaid wages. However, if employers abuse a worker, or retaliate against her for reporting the abuse, the NYS Division of Human Rights can issue fines.

The law in Brazil is far more expansive, guaranteeing an eight-hour workday for a maximum of forty-four hours work per week, the right to the minimum wage, a lunch break, severance pay, a month of paid vacation, maternity benefits, and employer payments into the national social security fund. Employers are also required to provide notice of termination at least 30 days in advance; employers may or may not ask workers to continue working during this period of 30 days. Although stipulated by law, unemployment insurance remains under dispute.<sup>22</sup> There are an estimated 7 million domestic workers in Brazil and 634,000<sup>23</sup> in São Paulo alone.<sup>24</sup>

The Brazilian system is also complaint-driven, and workers appeal to the labor courts<sup>25</sup> to enforce their rights. If an employer does not pay social security, or "register" their domestic worker in the system, they can be fined. Domestic workers keep track of their hours in an official workbook, which employers are required to sign, in effect acting as a contract and proof of service. The federal Ministry of Labor and Employment is also empowered to investigate complaints, but cannot enter households to conduct inspections to determine if an employer is in compliance with the law.

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<sup>21</sup> Domestic Workers United, and Data Center, *Home Is Where the Work Is Inside New York's Domestic Work Industry*, Report (2006).

<sup>22</sup> Fundo de Garantia do Tempo de Serviço (FGTS).

<sup>23</sup> Governo do Estado de São Paulo. "O Emprego Doméstico na Região Metropolitana de São Paulo 2014," Fundação Sistema Estadual de Análise de Dados (23 April 2015): 4.

<sup>24</sup> A large majority of Brazil's domestic workers are native-born black women who are descendants of African slaves. Due to lack of economic opportunity, these women migrate within Brazil from primarily rural areas in the northeast to urban areas, such as Salvador, São Paulo, and Rio de Janeiro to do home care work. The workforce is defined by domestic, rather than international, migration. Lisa Brown, "Invisible Maids: Slavery and Soap Operas in Northeast Brazil," *Agenda: Empowering Women for Gender Equity* No. 70, no. Gender-Based Violence Trilogy, Volume 1,2: Trafficking (2006): 76-86.

<sup>25</sup> The Consolidation of Labor Laws in Brazil (Consolidação das Leis do Trabalho, CLT).

## II. Research Methodology and Design

### Definition of Problem and Key Research Questions

This project evaluates the implementation of the Domestic Workers' Bill of Rights in New York City and Article 7 of the Brazilian Constitution in São Paulo. It explores the implementation challenges faced by the administering authorities and relevant non-governmental organizations (NGOs), as well as the ability of domestic workers and employers to access and comply with the rights articulated in the laws.

### Primary Research Questions

The primary research questions that were addressed are:

- To what extent do the laws achieve their intended rights and protections for domestic workers?
- What is the role of municipal and state authorities to implement and enforce the laws?
- What are the barriers to achieving full implementation of the law?
- What rights or services remain unaddressed?
- To what extent does documentation status affect the implementation and outcomes of these laws?

### Methodology

The project employed several strategies to obtain relevant data and information needed for the research study. Qualitative data was primarily collected through interviews and focus groups with four key stakeholder groups: 1) government agencies, 2) non-governmental organizations (NGOs) and community-based organizations (CBOs), 3) domestic workers, and 4) employers. A total of 46 individuals shared their views and experiences with the research team, 25 in Brazil (São Paulo and Rio de Janeiro) and 21 in New York City.<sup>26</sup>

The information collected from these groups capture their experience with regard to the implementation of the new laws. Interviews were also conducted with key experts to collect available quantitative data to measure the scope and effects of implementation. Ideally, the New York State Department of Labor would provide information about the complaint process, average length of time from complaint to adjudication, and total number of complaints filed. Despite repeated attempts, the DOL has agreed only to release information about complaints to the Division of Human Rights regarding abuse, and declined to fully disclose data about wage theft cases. However, the Capstone Team intends to continue to press for the full dataset, which will be shared with UN Women if/when received.

### Interviews and Focus Group Discussions

Four separate interview guides were developed – one for each stakeholder group, to collect qualitative information about each group's experience with the implementation process of the

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<sup>26</sup> Although the majority of our interviews and research focused on the law's application in São Paulo, we were able to conduct two interviews with domestic workers in Rio de Janeiro.

new laws. All interviewees signed consent forms prior to being interviewed. To protect the privacy of domestic workers and employers, pseudonyms are used in this report in place of their real names. To ensure the information collected during interviews was as accurate as possible, one or two note-takers were always present. The research team recorded some interviews on an unobstructed cellphone device, and in Brazil, an interpreter hired by the team often provided consecutive translation. Some interviews were transcribed and the transcription crosschecked with interview notes. For quality control purposes, multiple team members reviewed all notes and transcriptions. The team benefitted from having one native Portuguese speaker from São Paulo. All interviews were conducted during the period of March 10 – April 26, 2015.

A number of organizations, government officials, and experts were contacted, consulted, and interviewed. Several became key collaborators in organizing focus groups and providing connections to other key persons or information. They include a diverse mix of NGOs at national and local levels, some of which are worker-led, to government agencies, unions, academics, judges, legal experts, and elected officials, as listed below in Table 2 and Table 3.

Focus group discussions were employed in an effort to collect information that might not be otherwise derived from the individual interviews. The environment of a group discussion among peers with shared identities promotes self-disclosure among participants, which often yields a more personal perspective on the life experiences of those in the group.

Two focus group discussions were conducted. The first consisted of a group of five domestic workers in São Paulo, organized by Sindicato dos Trabalhadores Domésticos do Município de São Paulo (the Domestic Workers' Union of the Municipality of São Paulo). The second consisted of a group of four domestic workers in New York City, organized by the National Domestic Worker Alliance.

**Table 2: Interviews completed in New York City**

Category	Number	Organization or Person Name
<b>NGOs</b>	9	<ul style="list-style-type: none"> <li>• Adhikaar</li> <li>• Damayan</li> <li>• Domestic Workers United (DWU)</li> <li>• National Domestic Workers' Alliance (NDWA)</li> <li>• National Employment Law Project (NELP)</li> <li>• Urban Justice Center (UJC)</li> </ul>
<b>Government officials, judges, other experts</b>	6	<ul style="list-style-type: none"> <li>• Mayor's Office of Immigrant Affairs</li> <li>• Office of Senator Diane Savino</li> <li>• NYC Councilman Brad Lander</li> <li>• Office of Senator Liz Krueger</li> <li>• Harmony Goldberg, Academic Expert on Domestic Work</li> <li>• Claire Hobden, International Labor Organization (ILO)</li> </ul>
<b>Domestic Workers</b>	4	<ul style="list-style-type: none"> <li>• Focus group with four domestic workers (organized by NDWA)</li> </ul>
<b>Employers/agencies</b>	2	<ul style="list-style-type: none"> <li>• Jews for Racial and Economic Justice</li> <li>• Park Slope Parents</li> </ul>
<b>TOTAL</b>	21	

**Note:** The total number of interviews may exceed the total number of organizations because in some cases multiple contacts were interviewed at the same organization. A more complete list and detailed description of the stakeholders interviewed can be found in Annex 1 of this report; the interview questions for each stakeholder group can be found in Annex 2.

**Table 3: Interviews completed in São Paulo and Rio de Janeiro**

Category	Number	Organization or Person Name
<b>NGOs</b>	5	<ul style="list-style-type: none"> <li>• National Confederation for Workers in Trade and Service (CONTRACS)</li> <li>• Domestic Legal Institute</li> <li>• House of the Migrant</li> <li>• Domestic Workers' Union in the Municipality of São Paulo (i.e., the president and a director)</li> </ul>
<b>Government officials, lawyers, judges, other experts</b>	7	<ul style="list-style-type: none"> <li>• Adjunct-Secretary of Human Rights in the City of São Paulo</li> <li>• Judges of the Regional Labor Court of São Paulo (2 judges)</li> <li>• Secretary for Women's Policies</li> <li>• Regional Division of Labor and Employment</li> <li>• Felsberg Law Firm</li> <li>• Freitas Guimarães Law Firm</li> </ul>
<b>Domestic Workers</b>	10	<ul style="list-style-type: none"> <li>• Focus group with five domestic workers in São Paulo</li> <li>• Individual in-depth interviews with three domestic workers in São Paulo</li> <li>• Individual in-depth interviews with two domestic workers in Rio de Janeiro</li> </ul>
<b>Employers/Private Sector</b>	3	<ul style="list-style-type: none"> <li>• Two employers</li> <li>• Lalabee (startup company)</li> </ul>
<b>TOTAL</b>	25	

**Note:** The total number of interviews may exceed the total number of organizations because in some cases multiple contacts were interviewed at the same organization. A more complete list and detailed description of the stakeholders interviewed can be found in Annex 1 of this report; the interview questions for each stakeholder group can be found in Annex 2.

### III. Case 1: São Paulo and Rio de Janeiro, Brazil

This section provides a snapshot of domestic work in São Paulo; a detailed breakdown of the protections under the amendment; the challenges domestic workers face; employer perspectives; an overview of the law's implementation and enforcement mechanisms and obstacles; and an analysis of the law's limitations.

#### Snapshot of Domestic Work in Brazil

In Brazil, domestic work is characterized as it is in many other countries as being of low economic and social value. As a result, it is relegated to society's most vulnerable groups: women, the poor and uneducated, and underprivileged racial groups.

According to the Brazilian Institute of Geography and Statistics (IBGE), there were 6.4 million<sup>27</sup> domestic workers in 2014. In 2013, there were approximately 106 million<sup>28</sup> total workers in the Brazilian labor force. These figures demonstrate that domestic work is one of the largest occupational categories in the country. In addition, 94.3% of all domestic workers are female and 70% of them are of black or of mixed descent. The average age of a domestic worker is 40 years and her level of education varies. 64% either have no education or only partial education at the elementary school level.<sup>29</sup>

The law defines a domestic worker as every person who works on a continuous basis for a person or a family, with no lucrative purpose, within a place of residence.<sup>30</sup> The most common categories of domestic workers in Brazil are cooks, nannies, cleaners, guards, drivers, gardeners, elder caregivers, and house managers.<sup>31</sup>

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<sup>27</sup> Interview with Mario Avellino, CEO, Instituto Doméstica Legal in Rio de Janeiro.

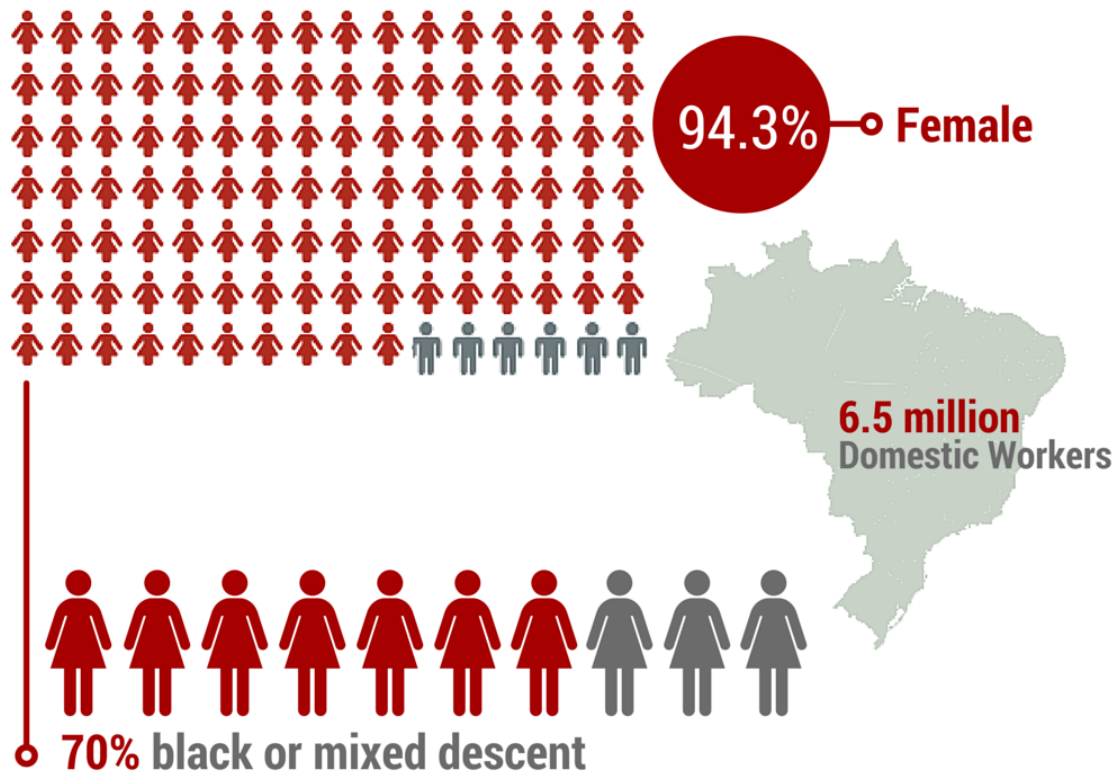
<sup>28</sup> The total labor force includes people ages 15 and older that meet the International Labor Organization's definition of the economically active population, which includes all people who supply labor for the production of goods and services during a specified period, see "Labor Force, total," The World Bank, Website, accessed 20 April 2015, <<http://data.worldbank.org/indicator/SL.TLF.TOTL.IN>>.

<sup>29</sup> Brazilian Institute of Geography and Statistics (IBGE), *Pesquisa Nacional por Amostra de Domicílios. Síntese de Indicadores 2008* (Rio de Janeiro: IBGE, 2009): 11.

<sup>30</sup> Domestic Worker Law #5.859/72 .

<sup>31</sup> Ana Virgínia Moreira Gomes and Patrícia Tuma Martins Bertolin, "Regulatory Challenges of Domestic Work: The Case of Brazil," *Labour Law and Development Research Laboratory* (Montreal: McGill University, Canada, December 2010), 6.

Figure 1: Demographics of Domestic Workers in Brazil



### Detailed Breakdown of Protection

The process for regulating domestic work and affording protections to domestic workers in Brazil has evolved over the past 70 years. It started first with state regulation concerning the definition of domestic work and the legal identification of domestic workers through the introduction of a labor card. These regulations, however, did not aim to recognize the labor rights of these workers, but to establish a system of control over them.<sup>32</sup>

While early labor laws excluded domestic work protections, in 1960 domestic workers were added as voluntary contributors to the social security system. In 1972, federal law 5.859 was passed (Lei do Empregado Doméstico, “The Domestic Worker Law”) and guaranteed some of the first basic labor rights to domestic workers.

In 1988, when Brazil adopted a new Constitution, domestic workers were guaranteed additional fundamental labor rights. Specifically, Article 7 grants domestic workers the following basic rights (out of the 34 fundamental labor rights for all workers in Brazil):

<sup>32</sup> Ana Virgínia Moreira Gomes and Patrícia Tuma Martins Bertolin, “Regulatory Challenges of Domestic Work: The Case of Brazil,” *Labour Law and Development Research Laboratory* (Montreal: McGill University, Canada, December 2010), 7.

- **Minimum wage**
- **Irreducibility of wage**
- **Annual bonus:** Equal to one month's salary.
- **Paid time off:** One day off paid/per week, preferably on Sundays
- **Vacation:** Annual paid vacation with remuneration at least one third higher than the normal wage.
- **Maternity leave:** Includes 120 days paid maternity leave.
- **Paternity Leave:** Includes five days paid paternity leave.
- **Notice of dismissal**
- **Integration into the social security system**<sup>33</sup>

Since then, regulation has followed a trend towards the inclusion of domestic workers in the labor and social security systems. In 2003, the International Labor Organization (ILO) and the Brazilian government signed a memorandum of understanding for the establishment of a technical cooperation program promoting a decent work agenda. The government announced steps to improve conditions of work, income, and social protection of domestic workers, with the guarantee of all labor rights established by the CLT (Consolidação das Leis do Trabalho, the "Consolidation of Labor Laws").<sup>34</sup>

In addition, in 2006, Law 11.324 modified some articles of the 1972 law to guarantee the following additional rights:

- **Paid vacation:** Includes 30 days of paid vacation.
- **Protection:** Includes employment protection for pregnant workers.
- **Paid legal holidays**
- **Wage protection:** Prohibits a wage decrease in case of supply of meals, housing, and hygienic products by the employer.

The most recent law passed in April of 2013, which is the focus of this study, is known as the PEC (Proposta de Emenda Constitucional, or, the Constitutional Amendment Bill). An amendment to Article 7, this law provides even greater protections for domestic workers including:

- **Hours:** Working hours limited to a 44-hour work week and include basic entitlements such as an eight-hour working day, and a lunch break.
- **Overtime pay**
- **Family salary** or "salário-família"<sup>35</sup>
- **Paid time off:** Federal and municipal holidays are granted, one month (30 days) of holiday per year.
- **Day of Rest:** One day of rest per week
- **Social security:** Employers must pay 8% of the worker's salary to social security each month.

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<sup>33</sup> Ibid.

<sup>34</sup> Janine Berg, "Laws or Luck? Understanding rising formality in Brazil in the 2000," Working Paper No. 5 International Labor Organization (Brazil, 2010), 20.

<sup>35</sup> A social security benefit paid in proportion to the number of children in the family of the worker.

- **Severance pay:** Employers must also pay 8% of the worker's salary into the Severance Indemnity Fund (Fundo de Garantia do Tempo e Serviço, FGTS) each month. Workers can withdraw funds from the FGTS upon termination of their employment.<sup>36</sup>
- **Termination Notice:** Employers must give 30 days notice of termination.

Most of these changes have been accepted and implemented, but there are still challenges to date around the government severance fund and social security payments. In early May 2015, the Brazilian Senate passed a law that required employers to pay 8% of workers' salary every month, plus an added 3.2% monthly rate, into the severance fund. The 3.2% monthly rate replaces the lump sum fine worth 40% of the pot that employers have to pay to other labor categories when they fire workers without cause. The Brazilian Senate also reduced the social security payments from 12% to 8%.<sup>37</sup> The president must now sanction this proposal as law.

## Discrimination and the Challenges of Domestic Work

The 1988 Federal Constitution prohibits formal discrimination based on gender. It guarantees the fundamental right of men and women to "have equal rights and obligations."<sup>38</sup> Article 7 of the Constitution sets out the fundamental rights of all workers and prohibits discrimination in relation to recruitment and employment on the grounds of sex, age, color, or civil status. However, gender and worker equality as set forth in the law is not reflected in reality as a result of the prevailing underlying patriarchal culture.<sup>39</sup>

Discrimination based on gender and race is very prevalent. In spite of the growing integration of women and Afro-Brazilians into the labor market, the wage disadvantage for these groups is still very pronounced. Although the gap has been narrowing, women still earn less than men in all types of work. Afro-Brazilian women earn the least.<sup>40</sup>

Gendered work patterns are another aspect of Brazilian society and culture that affect the lives of domestic workers. While women's participation in the labor market has increased, the division of care work tasks has not adjusted proportionally. Women are still responsible for most of domestic tasks.<sup>41</sup> A national survey by IBGE showed that in 2007:

"Only half of men did any domestic tasks (51.4%), while nine out of ten women had this responsibility. For women, having a job did not mean that they would not be the only ones responsible for domestic tasks. On the contrary, when employed, the participation of women in these tasks was even bigger (92%)."<sup>42</sup>

<sup>36</sup> "Introduction to FGTS," Brazil Business, accessed 9 May 2015, <<http://thebrazilbusiness.com/article/introduction-to-fgts>>.

<sup>37</sup> Gabriela Guerreiro and Flávia Foreque, "Empregado doméstico passa a ter direito au FGTS," *Folha de S. Paulo*, 6 May 2015, <<http://www1.folha.uol.com.br/mercado/2015/05/1625741-senado-regulamenta-direito-do-trabalhador-domestico.shtml>>.

<sup>38</sup> Brazilian Constitution, Article 5, subparagraph 1.

<sup>39</sup> Ana Virgínia Moreira Gomes and Patrícia Tuma Martins Bertolin, "Regulatory Challenges of Domestic Work: The Case of Brazil," *Labour Law and Development Research Laboratory* (Montreal: McGill University, Canada, December 2010), 6.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> IBGE, *Síntese de Indicadores Sociais 2007* (Rio de Janeiro: IBGE, 2008): 207.

Jessica, a domestic worker in the affluent Zona Sul area of Rio de Janeiro expressed this reality:

“I do all the cleaning and cooking at the home of my employer. Then when I go home at the end of a long day, I must do it all at my house too. My husband tries to help, but in the end, I’m the woman so I have to do it.”<sup>43</sup>

According to the International Labor Organization, domestic workers face “indirect discrimination,” meaning that the law does not grant them the full scope of rights as it does to other categories of workers. This indirect discrimination disadvantages domestic workers compared to other workers in the labor market.<sup>44</sup>

Indirect discrimination results partially from the informality of the domestic work industry. Since domestic work is performed inside a private household and many domestic workers have limited or even no knowledge of their rights, many of them work informally all their lives.<sup>45</sup> This informal employment status creates adverse power dynamics between employers and domestic workers. This was evident in the comments made by domestic workers participating in a focus group discussion held at Sindicato dos Trabalhadores Domésticos do Município de São Paulo (the Domestic Workers’ Union of the Municipality of São Paulo).

*“I know my rights,  
but I also work from  
my heart.”*

– Rose (Maranhão, Brazil)

Several workers complained that they were being asked to take on more and more work without additional compensation. In our study, a 57-year-old domestic worker named Rose said that over the course of working for a family of eight in São Paulo for many years, she went from primarily being a cook, to doing laundry as well as having to supervise the nanny in the house. She worked over 10 hours per day and also agreed to working on Saturdays without getting paid overtime. She explained that it was difficult for her to say no to taking on more work.

Rose is not alone in her situation. Many workers in general reported that they do not have fixed working hours. As a result, employers can keep them longer and give them more work. Some workers, who are currently unregistered, would like to find out more about their rights and get registered but are afraid of how their employers will react.

Another common complaint shared by all women in the focus group discussion concerned the lack of notice of termination. Currently the law does require employers to give workers advance notice of termination, but our research contacts indicate domestic workers rarely receive

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<sup>43</sup> Interview with Jessica, domestic worker in Zona Sul, Rio de Janeiro.

<sup>44</sup> “The lower legal protection granted everywhere to domestic workers, most of whom are low-income women belonging to racial or ethnic minorities, and who are often foreigners, has been recognized as a form of indirect discrimination based on class, sex, race or migrant status.” ILO, “Equality at work: tackling the challenges,” Global Report under the Follow-up to the ILO session 2007 Report I (BO) (Geneva: ILO, 2007): 9.

<sup>45</sup> Ana Virgínia Moreira Gomes and Patrícia Tuma Martins Bertolin, “Regulatory Challenges of Domestic Work: The Case of Brazil,” *Labour Law and Development Research Laboratory* (Montreal: McGill University, Canada, December 2010), 6.

advance notice. One of the aspects of the law that still awaits presidential approval is the employers' contribution to their domestic worker's severance fund under the "Fundo de Garantia do Tempo de Serviço" (FGTS). Currently, employers must pay 8% of workers' salaries to FGTS each month, but they can fire employees at will and are not penalized for lack of termination notice unless workers pursue the case in Court.

Complaints of domestic workers changed in some ways after the passing of the law in April 2013. The workers who were interviewed and aware of their rights said that because of the law they felt more comfortable speaking up and asking for better compensation from their employers. They felt that they could leave at the end of an eight-hour workday and not feel scared that their employer would get upset.

While the law improved the jobs of some domestic workers, it also had the opposite effect on others. Workers reported that they were fired after the passing of the law because the financial obligations placed on the employers became too much for them to handle. Many employers opted to hire domestic workers only two days per week, so as not to have to pay for workers' benefits. (The law is ambiguous about the number of workdays per week that is required to establish employment, as it only refers to the "continuity" of the work.<sup>46</sup> Jurisprudence has often decided that three or more days per week are enough to meet the continuity requirement and therefore oblige the employer to pay full benefits.<sup>47</sup>)

Graça, a 42-year-old domestic worker in Flamengo, reported that she has several domestic worker friends who have been out of work for almost a year. Jessica in Zona Sul previously provided elder care and reported that it took her seven months to find her current job after her former employer passed away. She said she has never had to wait that long in between jobs in the past. These sentiments and recent experiences shared by workers like Jessica, Rose, and Graça with regard to their employment situations reveal how increased formalization of the workforce is having a negative impact on their livelihoods. .

## Employer Perspectives

Employers of domestic workers have their own share of challenges. It is important to keep in mind that there are two sides to this working relationship and that the perspective and experience of employers are equally important to address. The more the employer experience is understood, the more can be done to develop effective solutions in utilizing the law and securing better conditions for domestic workers.

Many employers refer to class differences and the history of slavery in Brazil as main contributors to the existing prejudices towards domestic workers. Scholar Kateryna Byelova refers to comments made by employers she interviewed:

"[Domestic workers] are still like a more inferior class. Not as much valued as a class of professionals. People see them as unqualified workers, who are doing the service. Probably the reasons of this you can see as well in the Brazilian slavery in the past." Another employer recounts, "I think we need them in the same extent they need us."

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<sup>46</sup> Art 1 Domestic Worker Law #5.859.

<sup>47</sup> Interview with Ivete Ribeiro and Andrea Brody, labor judges, at the Regional Labor Court in São Paulo.

And we need to value their work. I put a value on their work because I need what they are doing. I think there are positive changes today but there is still a lot of discrimination.<sup>48</sup>

The issue of trust in an employer-domestic worker is of supreme importance to both sides. An employer we interviewed in São Paulo commented that trust is the most important characteristic when recruiting a new domestic worker. Another employer, also in São Paulo, said she gave her new domestic worker the keys to her apartment within the first week of her employment. The employer recounted that she hired the domestic worker through a work colleague and because of this, she more naturally had a higher level of trust at the beginning of the working relationship than if it were another worker hired without a referral. According to her, trust could not be defined in a contract; rather it is built over time. However, she expressed that a contract could help ensure the trustworthiness of an employee and hold them accountable for their actions. For example, a previous domestic worker she employed had stolen a large sum of money from her. She said she did not have a contract with that worker, but wonders if a contract would have discouraged the worker from stealing. She admitted that it never occurred to her to write a contract because typically having a signed workbook is enough and recognized by the law.

The new law has affected employers' ability to pay for a full-time domestic worker. The same employer commented that after the law passed, she decreased her workers' hours to only two days a week instead of five. She said, "Under the new law, I have to pay almost double the cost because of all the requirements. It's just too much." This comment reflects what the domestic worker named Jessica reported regarding the high costs causing unemployment for domestic workers.

Mario Avelino, the CEO of the Domestic Legal Institute in Rio de Janeiro, said that employers are largely aware of the new law but are unaware of the details regarding their obligations. Employers hire his firm to help them handle the legal paperwork required to comply with the law.<sup>49</sup>

The sentiments expressed by the employers and domestic workers interviewed for this study in São Paulo and Rio de Janeiro shed light on the possible effects the implementation of the law is having.

## Implementation of the Law

After having discussed the experience of domestic workers and their employers with the new legal requirements, we will now turn to the mechanisms and processes that were employed to implement the law. The implementation of the 2013 amendment to Article 7 of the Brazilian Constitution consists of three primary avenues: awareness raising, formal enforcement, and grassroots enforcement. This section describes historical and current efforts to implement and enforce the law.

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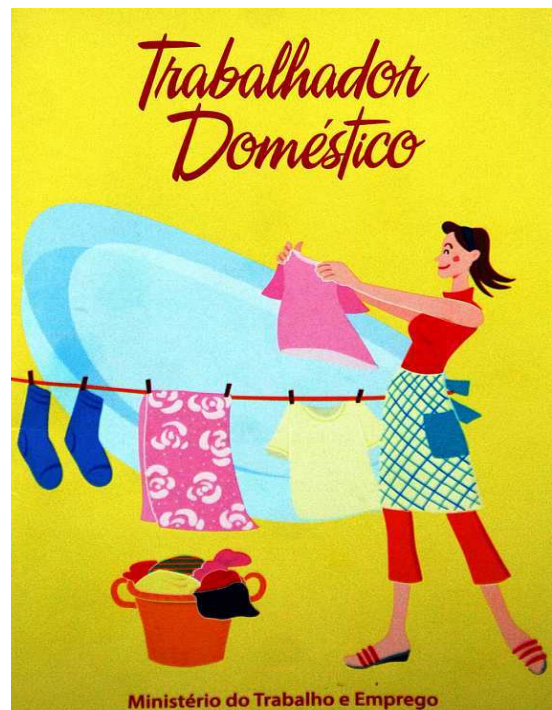
<sup>48</sup> Kateryna Byelova, "Social and Legal Empowerment of Domestic Workers in Brazil." Department of International Environment and Development Studies, (Ås: Norwegian University of Life Sciences, 2014): 52.

<sup>49</sup> Interview conducted with Mario Avelino in Rio de Janeiro, March 23, 2015.

## Awareness Raising

The Ministry of Labor and Employment (MTE) worked with the trade unions that represent domestic workers to publicize the change in the law in 2013.<sup>50</sup> In particular, MTE announced the change through television and radio news programs and public banners and billboards; it also produced a booklet with questions and answers about the changes in the law (Figure 2). Trade unions at the national and municipal levels worked together to publicize the amendment and updates about the law through regular newsletters. For example, the National Confederation for Workers in Trade and Services (CONTRACS) published a newsletter in August 2014 to advise domestic workers that employers who failed to register them would be penalized with a fine of R\$805,06 (\$272 USD) by MTE starting on August 7, 2014.<sup>51</sup> Domestic workers' unions in the city of São Paulo and in other cities of the state of São Paulo distributed the newsletter to their members and in their communities.<sup>52</sup>

**Figure 2: Brazil's Ministry of Labor and Employment's Booklet for Domestic Workers (Cartilha do Trabalhador Doméstico)**



Interviews with employers and domestic workers in São Paulo confirm that the television and radio announcements generally succeeded in alerting citizens of changes in the law. However, both employers and domestic workers reported that they still required more information and conducted additional research to clarify the meaning of the law. For example, Renata, an employer, stated that she heard about the law through a television news program, and then

<sup>50</sup> Interview with a labor inspector at the Regional Office of the Ministry of Labor and Employment in São Paulo.

<sup>51</sup> CONTRACS, "Boletim das Trabalhadoras Domésticas," August 2014, CONTRACS, 17 April 2015. <<http://goo.gl/AoBU5K>>.

<sup>52</sup> Interview with domestic workers from focus group in São Paulo.

consulted her father-in-law to discuss if she should change the way she manages her domestic workers.<sup>53</sup> Similarly, domestic workers Fátima, Jessica, and Graça reported learning about the amendment on a television news program and in the newspaper.<sup>54</sup> Graça even stated she learned about the law through soap operas.<sup>55</sup>

Lawyer Ricardo Guimarães stated that the media's portrayal of the new law was inadequate and problematic, and ultimately confused employers and domestic workers. Guimarães explained that the media focused repeatedly on the financial burden and non-compliance risks to employers, leading some employers to let go of their domestic workers without first understanding the changes in the law.<sup>56</sup>

In addition to these more recent awareness-raising campaigns, MTE developed a program called "Citizen Domestic Worker" (*Trabalho Doméstico Cidadão*), which ran between 2006 and 2007 and consisted of educational, professional development, and policy awareness programming for domestic workers.<sup>57</sup> The program has continued and is still active under the Secretariat of Policies for the Promotion of Racial Equality at the federal level in partnership with MTE, UN Women, and the International Labor Organization (ILO), among other partners.<sup>58</sup>

### Formal Enforcement

Although the rights of Brazilian domestic workers are regulated in federal law, the burden of government-led enforcement falls on the federal authorities working at the municipal level. The Regional Office of the Ministry of Labor and Employment (MTE) in São Paulo has the primary responsibility to ensure compliance, while the labor courts continue to play a large role in settling disputes between employers and domestic workers. The municipal offices of the Secretary of Human Rights and the Secretary for Women's Policies hold no formal responsibilities to enforce the law, but are well positioned to advise the mayor on the protection of domestic worker's rights. However, both offices focus more on overarching issues, such as decent work and violence against women, rather than domestic workers themselves. This section and Figure 3 briefly outlines the roles and activities by the different authorities, as well as their limitations.

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<sup>53</sup> Interview with Renata, employer, in São Paulo.

<sup>54</sup> Interviews with domestic workers in São Paulo and Rio de Janeiro from focus group and personal interviews.

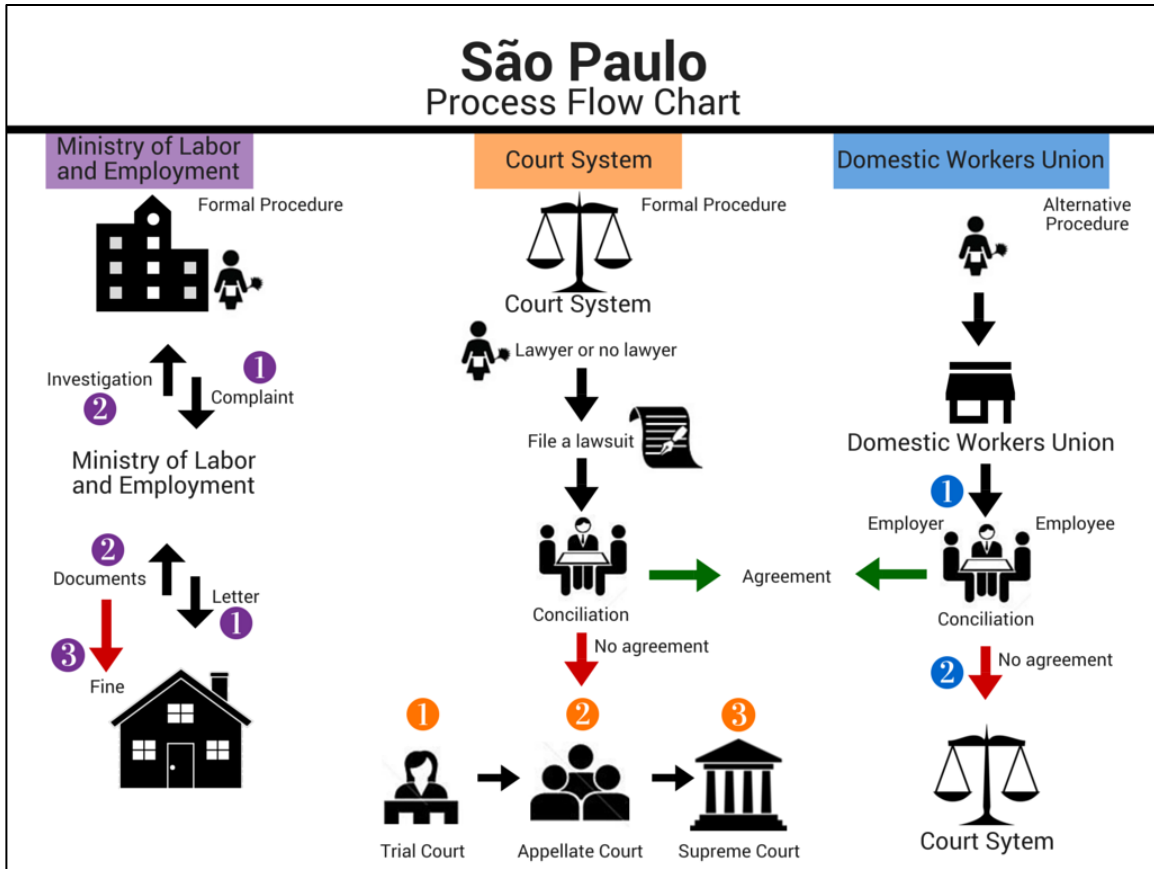
<sup>55</sup> Interview with Graça, domestic worker, in Rio de Janeiro.

<sup>56</sup> Interview with Ricardo Guimarães, labor lawyer, in São Paulo.

<sup>57</sup> Ana Virgínia Moreira Gomes and Patrícia Tuma Martins Bertolin, "Regulatory Challenges of Domestic Work: The Case of Brazil," *Labour Law and Development Research Laboratory* (Montreal: McGill University, Canada, December 2010), 21-22.

<sup>58</sup> Secretaria de Políticas de Ações Afirmativas, "Ações Afirmativas," Web, 26 April, 2015. <<http://goo.gl/1nOGVk>>.

Figure 3: Process for Domestic Workers to File a Complaint in Brazil



*Regional Office of the Ministry of Labor and Employment in São Paulo*

The regional office of the Ministry of Labor and Employment in São Paulo (MTE) generally oversees labor inspections and monitors the enforcement of labor laws at the local level, but has a more limited mandate with regards to the Article 7 amendment. Its primary responsibilities include oversight of the registration of workbooks and execution of investigations and fines against employers who fail to register their workbooks. Domestic workers who are not registered may report their employers to MTE, which will conduct an investigation to determine if the workbook includes the mandatory pieces of information, such as remuneration, social security payments, hours, overtime stipulations, and vacation policy. MTE can issue a fine against employers of R\$805,06 (\$272 USD) for failure to register workers and can increase the fine for other omissions, such as worker age and time of service; however, MTE cannot recover back wages.<sup>59</sup>

The labor inspector interviewed for this study noted, however, that domestic workers rarely report their employers to MTE because they fear for their jobs and reputation.<sup>60</sup> Domestic workers are typically hired by word-of-mouth recommendation. Both employers Renata and

<sup>59</sup> CONTRACS, "Boletim das Trabalhadoras Domésticas," August 2014, CONTRACS, 17 April 2015. <<http://goo.gl/AoBU5K>>.

<sup>60</sup> Interview with a labor inspector at the Regional Office of the Ministry of Labor and Employment in São Paulo.

Carla stated that they hired their domestic workers through a referral from a friend.<sup>61</sup> Filing a complaint may jeopardize a domestic worker's chance of finding another job immediately. The labor inspector also added that there is currently no protection for the domestic worker who reports a rights violation anonymously.<sup>62</sup> If the inspector follows up and there is only one worker in the house, the identity of the complainant becomes immediately obvious to the employer.

MTE's investigation process is also circumscribed by Article 5 of the Constitution, which ensures that the home is inviolable and should not be supervised or inspected without a court order.<sup>63</sup> However, labor inspectors can still monitor the working relationship between employers and employees indirectly. Normative Instruction 110/2014, issued by MTE, explains how this is done. First, the inspector notifies the employer by mail about a date and time to appear before the regional office with the employee's workbook, their primary source of documentation. If the employer does not appear before the inspector with the documents requested, a fine may be issued. With all the documents in hand, the inspector investigates if the employer is following the law.<sup>64</sup>

### *The Court System*

When employers or domestic workers need to settle a labor dispute, over issues such as unpaid wages or vacation, they may hire lawyers and negotiate through the court system. Although this may be an expensive and time-consuming option, domestic workers often hired lawyers in hopes of receiving compensation from employers. The court system requires several steps before a final judgment is rendered. First, the domestic worker files a complaint through a lawyer or union representative. After being screened, the complaint is directed to the court of original jurisdiction, called *Vara do Trabalho*. At this stage, the law stipulates that the judge, before considering the case, tries to mediate and negotiate a settlement between the parties. If this fails, the judge will examine the case and determine a sentence.<sup>65</sup>

Both the employer and the employee may challenge the sentence and take it to a Court of Appeals, where the dispute is examined and judged by a group of judges, usually three. This sentence may also be elevated to the Superior Labor Court. If appeals are exhausted, the most recent decision becomes final. The dispute then goes back to the trial court where a new phase begins: the execution of the judgment.<sup>66</sup>

Unlike the investigation process by MTE, the court system may offer some financial compensation to domestic workers. Judges Ivete Ribeiro and Andrea Brody, who were interviewed for this study, stated that workers have trust in the judiciary. They said that in São Paulo, an average of three thousand labor lawsuits are filed in each trial court every year. There are more than one hundred courts in the city. In 2014, there were approximately 425,000

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<sup>61</sup> Interview with employers in São Paulo.

<sup>62</sup> Interview with a labor inspector at the Regional Office of the Ministry of Labor and Employment in São Paulo.

<sup>63</sup> Brasil, "Constituição da República Federativa do Brasil, Art. 5º inc. XI," Web, 26 April 2015. <[http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm)>.

<sup>64</sup> Ministry of Labor and Employment, "Normative instruction 110/2014," 7 August 2014, Web, 20 April 2015. <<http://goo.gl/uA19QQ>>.

<sup>65</sup> Interview with Ivete Ribeiro and Andrea Brody, labor judges, at the Regional Labor Court in São Paulo.

<sup>66</sup> *Ibid.*

lawsuits filed, of which 96,000 were appealed to a higher court.<sup>67</sup> However, these are the overall numbers of labor lawsuits and the percentage of disputes initiated by domestic workers in São Paulo is very small. Judge Ribeiro attributed this to the fact that domestic workers are still learning to access labor courts. She also added that smaller cities typically receive fewer labor complaints from domestic workers. This is because with a smaller community of employers, it is likely they know each other and their workers. As a result, workers are afraid to file a complaint for fear of being identified and potentially losing their job.<sup>68</sup>

#### *The Municipal Secretariat of Human Rights and Citizenship in São Paulo*

The Municipal Secretariat of Human Rights and Citizenship in São Paulo was established by municipal decree in January 2013 with a mission to “enhance the coordination and management of human rights policies and social participation in the city of São Paulo.”<sup>69</sup> The office formulates, implements, monitors, and evaluates policies and projects that promote human rights and citizenship and combat discrimination and prejudice. The office has mechanisms to receive complaints or requests from workers, but has not historically received any such complaints or requests from domestic workers.<sup>70</sup>

Adjunct Secretary Rogerio Sottili followed closely the mobilization of social movements to pressure the government for the amendment when he was working under the President’s administration in 2012. He explained that his party, the Worker’s Party, was invested in drafting and passing the bill, but was also concerned with the potential unintended consequences such as unemployment.<sup>71</sup> The Secretariat has paid increasing attention to workers’ rights and promoted the International Labor Organization’s decent work agenda, but, despite these efforts, little has been done for domestic workers specifically as a result of the constitutional amendment.

#### *The Municipal Secretariat for Women’s Policies in São Paulo*

The Municipal Office of the Secretary for Women’s Policies was also established in 2013 and aims to promote women’s rights. In particular, it focuses on women’s economic empowerment and protection against gender-based violence.<sup>72</sup> The Secretary, Denise Motta Dau, has previously worked with Unified Workers’ Central (CUT), a large union, that organized domestic workers across Brazil to campaign for the law. As a result, she is both familiar with, and invested in, the law’s implementation and believes the extension of rights will change the culture of the relationship between a domestic worker and their employer. “Employers now have to pay fair wages but can also demand more professional work,” she said. “This creates new expectations on both sides, and it takes time to adapt to the new system.”<sup>73</sup>

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<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

<sup>69</sup> Municipal Secretariat of Human Rights and Citizenship, “Competências e atribuições definidas por lei,” 15 April 2015. <<http://goo.gl/v0AKbi>>.

<sup>70</sup> Interview with Rogerio Sottili, Adjunct Secretary of Human Rights, the Municipal Secretariat of Human Rights and Citizenship in São Paulo.

<sup>71</sup> Ibid.

<sup>72</sup> Secretaria Municipal de Políticas Para as Mulheres, “Institucional,” 15 April 2015. <<http://goo.gl/4CINz1>>.

<sup>73</sup> Interview with Denise Dau, Municipal Secretary for Women’s Policies, the Municipal Secretariat for Women’s Policy in São Paulo.

Since 2013, her office has offered training programs for domestic workers to improve the quality of their services. It is part of a larger set of public policies focused on the economic empowerment of women in the city of São Paulo. However, her office does not receive requests or complaints from domestic workers who wish to learn more about their rights or report abuses.

### Grassroots Enforcement

Labor unions, lawyers, and non-governmental organizations (NGOs) participated in the campaign to pass the law and have since worked with employers and domestic workers to enforce the law. Despite sharing these objectives, there is little synergy among these actors.

### Labor Unions

#### *Domestic Workers' Union in São Paulo*

Labor unions for domestic workers play an important role in defending the rights and collective interests of individual workers or groups of workers. In general, it is rare for domestic workers to be organized. According to the Brazilian Institute of Geography and Statistics (IBGE), 1.9% or 101,000 domestic workers were affiliated with a labor union in 2007, the lowest percentage among the various categories of workers surveyed that year.<sup>74</sup> In São Paulo, the Domestic Workers' Union struggles to organize workers. Despite existing for 70 years, it has only been granted legal status as a union in 1990, and it still does not have all the privileges typically granted to unions, such as the right to collect dues from its members. Instead, the union collects fees for services, such as around R\$9 (\$3 USD) for calculating member's severance payment and 10% of negotiated salary or severance when the union mediates negotiations and notarizes agreements between employee and employer.<sup>75</sup> The union also collects small membership contributions and charges for lunch at weekly meetings. They have only one paid employee (an accountant) and some volunteers, mostly former and current domestic workers, which limits the union's scope for outreach, training, and enforcement activities.<sup>76</sup>

Maria Lima, president of the Domestic Workers' Union in São Paulo, explained that the union conducts grassroots enforcement through two main avenues: awareness raising and consultative and legal services.<sup>77</sup> Every month the union issues a newsletter with key facts about the amendment, and other issues related to domestic work. The colorful and easy to read bulletin often highlights the minimum wage for the state of São Paulo, as well as tasks domestic workers should not accept and safety and health tips. They distribute the newsletter to labor unions and among partners, such as the National Federation of Domestic Workers (FENATRAD)

*“Employers now have to pay fair wages but can also demand more professional work. This creates new expectations on both sides, and it takes time to adapt to the new system.”*

– Denise Dau, Secretary for Women's Policies

<sup>74</sup> Instituto Brasileiro de Geografia e Estatística, “Pesquisa Nacional por Amostra de Domicílios – PNAD,” IBGE, (2007), 17 April 2015. <<http://goo.gl/H6lb6g>>.

<sup>75</sup> The law stipulates that the union must authorize severance payments and contract terminations.

<sup>76</sup> Interview with Maria Lima, President, Domestic Workers' Union in São Paulo.

<sup>77</sup> Ibid.

based in Salvador, and the National Confederation for Workers in Trade and Services (CONTRACS) based in Brasília.

From Monday to Friday, every day between 15 and 20 domestic workers come to the Domestic Workers' Union for help. When a domestic worker is let go by their employer, reconciliation sessions between the employer and domestic worker often take place at the union's headquarters. Maria Lima explained that negotiations handled through the union usually result in a higher settlement for the domestic worker and is faster than when the case goes through the justice system. She stated, "We [the Domestic Workers' Union] have a higher rate of success because employers are coming to a place where domestic workers feel more welcome to negotiate."

*"We [the Domestic Workers' Union] have a higher rate of success because employers are coming to a place where domestic workers feel more welcome to negotiate."*

– Maria Lima, President of the Domestic Workers' Union in São Paulo

#### *CONTRACS*

The official union for workers in trade and services, which also includes domestic workers, is the National Confederation for Workers in Trade and Services (CONTRACS). CONTRACS was launched in 1993 as the official worker's union branch of the Unified Workers' Central (CUT), the primary national trade union of Brazil. CONTRACS, like CUT, aligns politically with and has often defended the Worker's Party, the party of President Dilma Rousseff.<sup>78</sup> CONTRACS also has an explicit mandate to serve the interests of domestic workers, having lobbied for the ratification of the ILO Convention 189 and the passing of the amendment to the Brazilian Constitution. Since the amendment was passed, CONTRACS has continued to organize domestic workers across Brazil and distribute information through newsletters posted on their website.

#### Non-governmental Organizations

##### *Doméstica Legal Institute*

NGOs have also been instrumental in grassroots efforts to enforce the law. Doméstica Legal Institute, based out of Rio de Janeiro, is notably the most active organization advocating for improvements in the law. Doméstica Legal Institute services two primary purposes. First, it operates as a for-profit service provider for employers of domestic workers to help ensure compliance with the law. Second, it also works as a non-profit educational outreach organization to raise public awareness for domestic workers and employers about the law and lobbies for policy changes. Due to the complexity of the law, employers increasingly turn to lawyers, such as those employed by Doméstica Legal Institute, to help organize their paperwork to ensure compliance with the law. Mario Avelino, the CEO of Doméstica Legal Institute, often travels to Brasília to meet with legislators and advocate for changes to the law.

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<sup>78</sup> CONTRACS, "Histórico," 15 April 2015. <<http://contracs.org.br/conteudo/33/historico>>.

## Gap Analysis

### Limitations of the Law

The passing of the 2013 constitutional amendment was justly celebrated as recognition of the dignity and value of domestic work. But despite this legal breakthrough, there are considerable implementation challenges and protection gaps. The employment conditions of domestic workers do not only depend on the degree of protection fixed by law, but also how far the laws are respected.<sup>79</sup> It is difficult to monitor enforcement of the law because domestic work takes place in the private, hidden space of the household, limiting the possibilities for labor inspectors to act on their own authority.

The personal factor in the relationship between the employer and the domestic worker may also diffuse the law's impact. Domestic workers often agree to work long hours out of good will or fear of unemployment. Employers may also think that they can offer domestic workers informal benefits such as legal, medical, and financial assistance, instead of following the law. Unlike a private company, the informal character of the household sometimes encourages off-the-books transactions between employer and employee.

### Intended and Unintended Impacts

There were both intended and unintended consequences of the law. The immediate intended impact was greater awareness about domestic workers' rights. Government authorities, NGOs, and the media were generally successful at publicizing the changes to the law.

According to the Regional Office of the Ministry of Labor and Employment in São Paulo, the number of employers and domestic workers inquiring about the law or requesting legal services has increased.<sup>80</sup> Labor lawyers Ricardo Guimarães and Ana Amelia Mascarenhas Camargo also experienced an increase in the demand for work contracts by employers.<sup>81</sup> Camargo expressed that she had to write several versions of the work contract until the language was simple enough for employers and employees to understand.

The extent to which the law has helped formalize domestic work is still difficult to quantify. Domestic workers were already required to have a formal contract before the law, yet only 39.3% of domestic workers reported having one in the last national employment survey.<sup>82</sup> Recent data released by the Data Analysis System Foundation of the Government of the State of São Paulo (Fundação SEADE) indicates that the number of domestic workers with a signed labor card has increased 2.3% in the city of São Paulo in 2014 when compared to 2013,<sup>83</sup> but there is no clear evidence of direct correlation between the constitutional amendment and the

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<sup>79</sup> Kateryna Byelova, "Social and Legal Empowerment of Domestic Workers in Brazil," Department of International Environment and Development Studies, (Ås: Norwegian University of Life Sciences, 2014): 39.

<sup>80</sup> Interview with a labor inspector at the Regional Office of the Ministry of Labor and Employment in São Paulo.

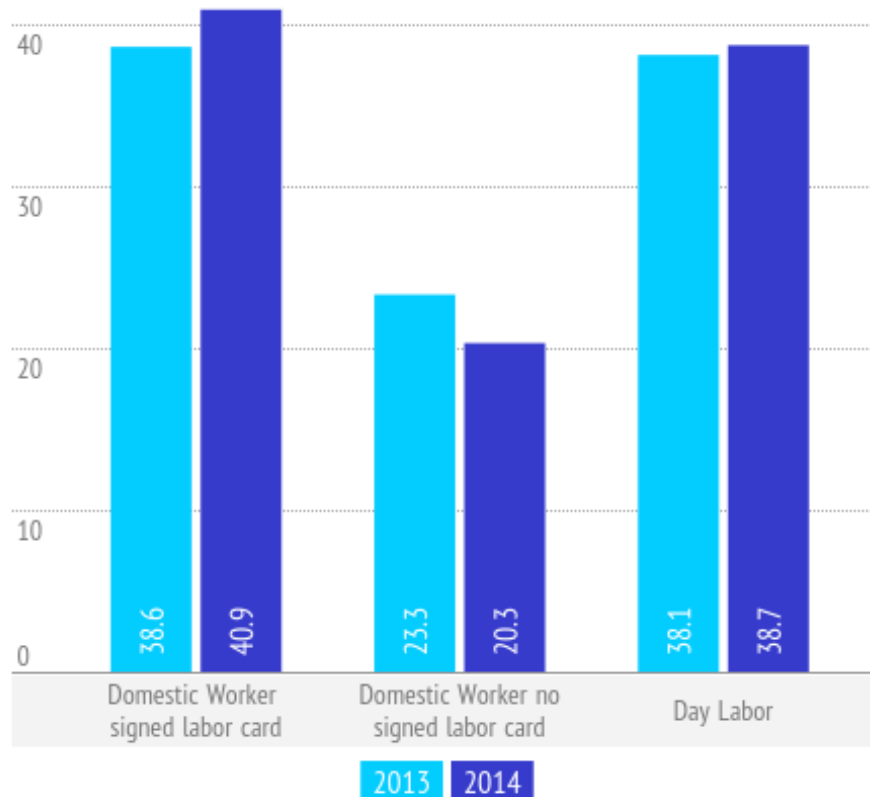
<sup>81</sup> Interview with labor lawyers in São Paulo.

<sup>82</sup> Instituto Brasileiro de Geografia e Estatística (IBGE), "Pesquisa Mensal de Emprego – PME: Evolução do Emprego com Carteira de Trabalho Assinada 2003-2012," IBGE (2012), 17 April 2015. <<http://goo.gl/EIH7Z0>>.

<sup>83</sup> Governo do Estado de São Paulo, "O Emprego Doméstico na Região Metropolitana de São Paulo 2014," 23 April 2015, Fundação Sistema Estadual de Análise de Dados, 26 April 2015: 4. <<http://goo.gl/rrhBU7>>.

formalization of work. The study also reveals that day labor has increased slightly between 2013 and 2014. Figure 4 below illustrates the distribution of female domestic workers in São Paulo during this period.

**Figure 4: Distribution of Female Domestic Workers by Employment Status in the Metropolitan Region of São Paulo 2013-2014 (%)**<sup>84</sup>



A major unintended impact of the law appears to be an increase in unemployment and underemployment. All interviewees in São Paulo and Rio de Janeiro confirmed having heard from domestic workers, employers, or the media about imminent layoffs.<sup>85</sup> In 2013, when the amendment went into effect, Mario Avelino from Doméstica Legal Institute estimated that as many as 815,000 domestic workers, almost half of all domestic workers, may be fired due to the

<sup>84</sup> Ibid: 6.

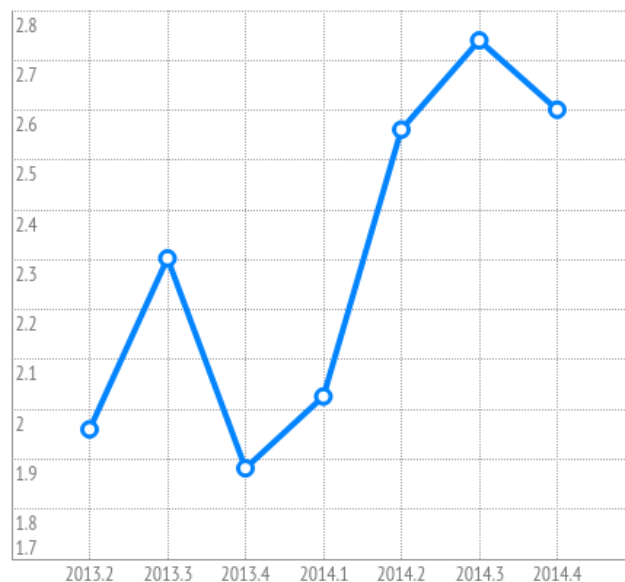
<sup>85</sup> A study by Dinkelman and Ranchhod in 2010 demonstrates that increases in the cost of labor do not necessarily cause unemployment. In "Evidence on the impact of minimum wage laws in an informal sector: Domestic workers in South Africa," the authors present an empirical example in which domestic work employers in South Africa face an extremely high minimum wage with no effective penalties and no monitoring. Instead of dismissing their domestic workers, employers chose to respond to the law. Dinkelman and Ranchhod documented immediate adjustments of wages upwards in the wake of the law. They also recorded significant increases in the percentage of domestic workers who signed a formal contract of employment after the law. The authors noted, however, that the analysis of the data could not rule out that employers achieved wage increases by reducing non-wage in-kind benefits such as free food. Taryn Dinkelman and Vimal Ranchhod, "Evidence on the impact of minimum wage laws in an informal sector: Domestic workers in South Africa," *Journal of Development Economics* 99 (2012).

increased cost burden.<sup>86</sup> Another unintended impact has been an increase in the demand for day labor. The courts have determined that domestic workers are entitled to full benefits only when they work three or more days per week for the same employer.<sup>87</sup> Consequently, employers may fire their full-time domestic workers and hire day laborers, who do not fall under the law's protection.

However, the increased cost of care work may also lead to demand for better public services. For example, both the Adjunct Secretary of Human Rights Rogerio Sottili and labor lawyer Ana Amelia Mascarenhas Camargo believe that parents could organize to petition for public daycare and quality full-time public education as an alternative to having a nanny at home.<sup>88</sup>

Finally, the law may have also increased the number of lawsuits domestic workers file against their employers. Data recently collected by Lalabee, a startup company offering online services for employers, reveal that the number of lawsuits from domestic workers in the State of São Paulo increased by 24.2% in 2014 compared to 2013.<sup>89</sup> Figure 5 below shows that, on average, the number of lawsuits has increased continuously.

**Figure 5: Number of lawsuits by domestic workers per quarter 2013-2014 (in thousands) in Brazil<sup>90</sup>**



<sup>86</sup> Instituto Doméstica Legal, "Propostas de Regulamentacao da Emenda 72/2013 (PEC das Domésticas) para a melhoria do emprego doméstico brasileiro," 2013, Instituto Doméstica Legal, 19 April 2015. <<http://goo.gl/Ob37ev>>; Maria Lopez Conde, "Domestic Workers Law Goes Into Effect," *The Rio Times*, 9 April 2013, <<http://riotimesonline.com/brazil-news/rio-business/domestic-workers-law-goes-into-effect-in-brazil/#>>.

<sup>87</sup> See decision from the Superior Labor Court RR nº 17.676/2005-007-09-00.0 on 4 May 2009. <<http://goo.gl/cxJzgp>>.

<sup>88</sup> Interview with Rogerio Sottili, Adjunct Secretary of Human Rights, The Municipal Secretariat of Human Rights and Citizenship in São Paulo; and Interview with Ana Amelia Mascarenhas Camargo, labor lawyer, in São Paulo.

<sup>89</sup> According to an independent and unpublished study of all filed lawsuits in Brazil commissioned by the private company Lalabee, 9,928 lawsuits were filed in 2014 compared to 7,989 in 2013.

<sup>90</sup> This data is part of an independent and unpublished study of all filed lawsuits in Brazil commissioned by the private company Lalabee. Unfortunately, no data previous to 2013 is available.

Despite a backlogged judiciary and increase in lawsuits, workers predominantly seek recourse through union-run mediations and in the court system.<sup>91</sup> This may be because domestic workers have little incentive to file a complaint with MTE since the agency can only fine an employer, as opposed to commanding compensation for employees.

In conclusion, the analysis of the implementation of the 2013 constitutional amendment in Brazil, particularly in São Paulo, revealed that there were both intended and unintended consequences of the law. Public campaigns have been successful in publicizing the changes in the law. Our research suggests that employers and employees have sought information about rights and obligations from public offices and trade unions.

However, the legal experts we interviewed noted that implementation challenges remain. Domestic workers often do not have enough evidence to build a case against their employers and take it to court. They also fear for their jobs and reputation if they file a complaint with the Ministry of Labor and Employment, even if this is done anonymously. Alternatively, domestic workers have sought legal advice from unions, where grievances between employers and workers may also be settled and notarized.

## IV. Case 2: New York State

After examining the case of Brazil's domestic worker protection in São Paulo in the previous section, we will now analyze the challenges and impacts of New York State's Domestic Workers' Bill of Rights with an emphasis on domestic workers in New York City. To this end, this section will provide a snapshot of domestic work in New York City; a detailed breakdown of the protections under the Bill of Rights; the challenges domestic workers face; employer perspectives; an overview of the law's implementation and enforcement mechanisms and obstacles; and an analysis of the law's limitations.

### Snapshot of Domestic Work in New York City

New York City is a major player in the global labor economy for domestic work, home to high concentrations of middle and upper class families that need help to maintain their households. As such, this work is increasingly viewed as "the work that makes all other work possible."<sup>92</sup> New York State law defines a domestic worker as someone who works in another person's home providing services, such as childcare, eldercare, cleaning, cooking, gardening, or other domestic jobs.<sup>93</sup> There are approximately 200,000 domestic workers in New York City.<sup>94</sup> However, due to the isolated and informal nature of the industry, it is difficult to accurately measure the size of the workforce.

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<sup>91</sup> Interview with Ivete Ribeiro and Andrea Brody, labor judges, Regional Labor Court in São Paulo.

<sup>92</sup> Linda Burnham and Nik Theodore. "Home Economics: The Invisible and Unregulated World of Domestic Work," (2012): 40.

<sup>93</sup> "Facts for Domestic Workers," New York State Department of Labor, (2010).

<<https://labor.ny.gov/legal/laws/pdf/domestic-workers/facts-for-domestic-workers.pdf>>.

<sup>94</sup> Domestic Workers United and Data Center. "Home Is Where the Work Is: Inside New York's Domestic Work Industry," (2006): 5.

Migrant women come to the United States in search of economic opportunity, which is lacking in their home countries. Over 90% of domestic workers in New York City are migrants from a diverse array of nationalities. A 2006 report, *Home is Where the Work Is*, the only survey of domestic workers in New York City, found that 93% of workers are women and 76% are non-U.S. citizens.<sup>95</sup> These workers come from more than 40 countries, mostly from the Global South. Approximately 65% are Afro-Caribbean, 20% Asian, and 7% are Latina. The same survey found that 33% of migrant domestic workers came to the U.S. because they were unable to support their families. While the wages may be better in the U.S. compared to their countries of origin, domestic workers still struggle to provide for their families. Wages vary depending on the type of domestic work, with live-out house cleaners often earning much higher wages than live-in domestic workers. It is also very common for employers to pay a weekly flat rate rather than hourly rates. Combined with unpredictable schedules and frequent expectations to work uncompensated overtime, these flat rates can lead to average wages that fall well below the minimum. According to a survey of domestic workers conducted by the Data Center and Domestic Workers United, 41% of workers earn low wages, 26% make below the minimum wage, and 67% do not receive overtime pay.<sup>96</sup>

Migrant domestic workers in New York City have a wide range of professional and educational backgrounds. For instance, the former professions of domestic workers interviewed included a lawyer, nurse, poultry plant worker, human rights activist, and music teacher. A national survey of domestic workers in 14 major metropolitan areas in the U.S., including New York City, found that approximately 31% have a high school degree, 15% completed some college, and 15% earned an associate's degree or higher.<sup>97</sup> In an interview with an organizer of Filipina domestic workers, the organizer noted that many of their members have relatively high levels of formal education. However, unable to attain the same level of employment that they had in the Philippines, workers undergo a process of deskilling.<sup>98</sup>

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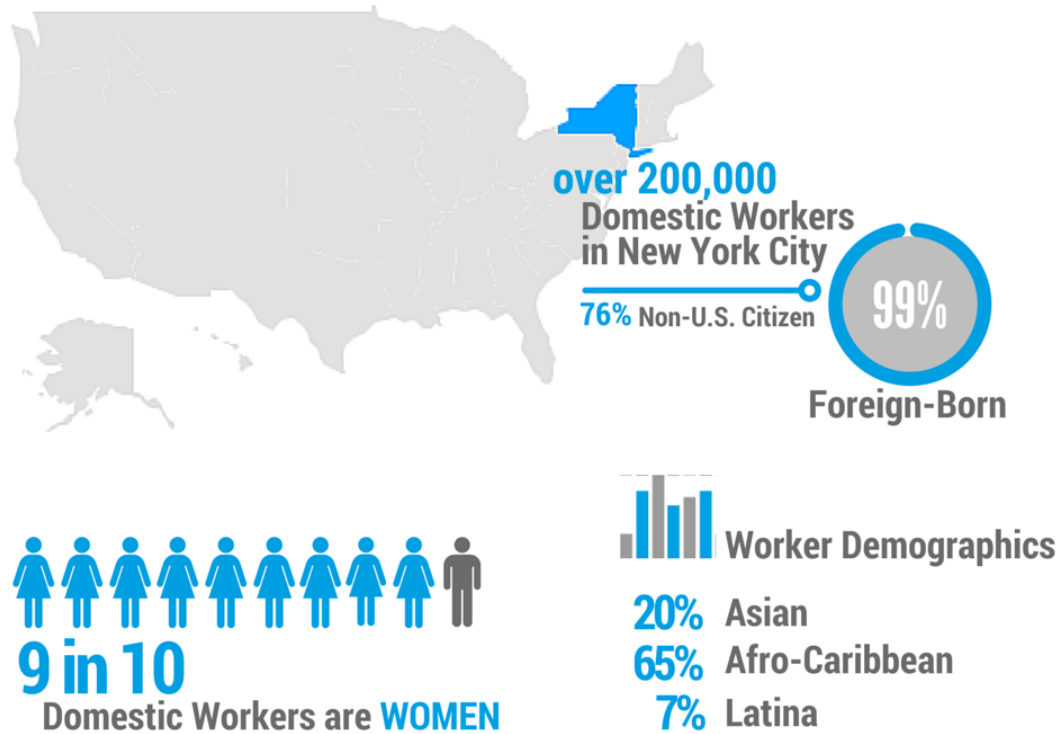
<sup>95</sup> Ibid, 41. This study included 547 domestic worker surveys, 14 worker testimonies, and interviews with 7 employers.

<sup>96</sup> Ibid, 19.

<sup>97</sup> Linda Burnham and Nik Theodore. "Home Economics: The Invisible and Unregulated World of Domestic Work," (2012): 41. The survey does not indicate education levels for the remaining 39% of those surveyed.

<sup>98</sup> Interview with Leah Obias, Community Organizer, Damayan Migrant Workers Association in New York City.

**Figure 6: Demographics of Domestic Workers in New York City**



**Detailed Breakdown of Protections**

In 2010, New York State passed the Domestic Workers’ Bill of Rights becoming the first state in the U.S. to pass a law increasing protections for domestic workers. The passage of the Bill of Rights was the result of a lengthy organizing campaign led by the NY Domestic Workers Justice Alliance and Domestic Workers United (DWU), an organization of Caribbean, Latina, and African nannies, housekeepers, and elderly caregivers in New York.<sup>99</sup> DWU spearheaded a diverse coalition of domestic workers, community-based organizations, employers, and trade unions to pressure the New York State legislature to bring domestic work out of the shadows by formalizing the industry with its first-ever legislated protections. After the victory in New York, Hawaii, California, and Massachusetts passed similar domestic worker protection laws in 2013 and 2014. Similar bills have been introduced in Connecticut and Illinois.<sup>100</sup>

The New York State Domestic Workers’ Bill of Rights includes the following protections:<sup>101</sup>

- **Paid time off:** Includes three paid days off per year after one year of employment.
- **Day of rest:** Includes one day of rest per week. A worker receives overtime pay if requested to work on a day of rest.

<sup>99</sup> Domestic Workers United. “History & Mission,” 15 Apr. 2015 <<http://www.domesticworkersunited.org/index.php/en/about>>.

<sup>100</sup> National Domestic Workers Alliance. “State Strategies,” 10 Apr. 2015. <<http://www.domesticworkers.org/initiatives/labor-protections>>.

<sup>101</sup> New York State Department of Labor. “Facts for Domestic Workers,”(2010). <<https://labor.ny.gov/legal/laws/pdf/domestic-workers/facts-for-domestic-workers.pdf>>.

- **Overtime coverage:** Raises the overtime rate to 1½ times the regular pay rate for some groups of domestic workers who were previously only entitled to 1½ times the minimum wage.
- **Expanded minimum wage coverage:** Extends minimum wage coverage to part-time babysitters and homecare workers as long as the work is not casual.
- **Human Rights Law:** Includes protection under New York State’s Human Rights law, which prohibits discrimination on the basis of race, sex, sexual orientation, religion, disability, or national origin.

In addition, the law required the state’s Department of Labor to conduct feasibility study on domestic worker collective bargaining rights, which was completed in November 2010.

All domestic workers, regardless of their immigration status, are protected under the Domestic Workers’ Bill of Rights.<sup>102</sup> However, in an interview with a domestic worker organizer in New York City, she pointed out that, “we have a lot of members who are undocumented and there’s real fear that they don’t believe that these rights pertain to them when they do. It is going to be hard to break that myth and make people aware.”<sup>103</sup>

In addition to the protections in the Domestic Workers’ Bill of Rights, the original legislative proposal from Domestic Workers United included a living wage, cost of living adjustments, notice of termination, severance pay, paid sick days, and health insurance.<sup>104</sup> Domestic worker organizing and advocacy groups are currently seeking other channels, such as city government, to acquire these rights and raise industry standards beyond the basic protections included in the law.<sup>105</sup>

The primary purpose of the Domestic Workers’ Bill of Rights was to respond to the horrendous work conditions within the industry. However, the legislation also implicitly addresses the historical exclusion of domestic workers from federal and state labor law. In 1935, the U.S. Congress enacted the National Labor Relations Act (NLRA), a law developed to protect workers’ rights. However, the NLRA explicitly excluded domestic workers and farm workers from the protections.<sup>106</sup> A similar law in New York State, the State Employment Relations Act (SERA), also explicitly excludes domestic workers.<sup>107</sup> The current exemption from protections under the NLRA and SERA limits the right to organizing and collective bargaining that other workers are afforded. The Domestic Workers’ Bill of Rights mandated a collective bargaining feasibility study, which concluded that there may be feasible options for domestic worker organizing and that the state law could be amended to include domestic workers.<sup>108</sup> This was an important finding, as

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<sup>102</sup> Ibid.

<sup>103</sup> Phone interview with Irene Jor, New York Organizer, National Domestic Workers Alliance in New York City.

<sup>104</sup> Claire Hobden, “Winning Fair Labour Standards for Domestic Workers: Lessons Learned from the Campaign for a Domestic Workers’ Bill of Rights in New York State,” (Geneva: ILO, 2010), 26-27.

<sup>105</sup> Phone interview with Irene Jor, New York Organizer, National Domestic Workers Alliance in New York City.

<sup>106</sup> 29 U.S.C. § 152(3).

<sup>107</sup> New York State Department of Labor, “Feasibility of Domestic Worker Collective Bargaining,” 2 Nov. 2010. 10 Apr. 2015. <<http://www.labor.ny.gov/legal/laws/pdf/domestic-workers/domestic-workers-feasibility-study.pdf>>.

<sup>108</sup> Ibid.

the right to collective bargaining for domestic workers would further galvanize domestic work as real work worthy of labor protections. However, this conventional mechanism for workers' rights may not be applicable to the domestic worker industry in the U.S. due to the unique worker-employee relationship where traditional worker and employer bargaining units do not exist, thereby raising the importance of stronger domestic worker protection legislation.<sup>109</sup>

Live-in domestic workers are excluded from overtime protections in the federal Fair Labor Standards Act (FLSA).<sup>110</sup> Additionally, by default, domestic workers are excluded from the Occupational Safety and Health Act (OSHA) and Title VII of the Civil Rights Act, which bars employment discrimination on the basis of "race, color, religion, sex, or national origin," because these laws only apply to workplaces with 15 or more employees.<sup>111</sup>

## Discrimination and the Challenges of Domestic Work

Domestic workers endure numerous challenges in the work place. Their work is often characterized by low wages and long work hours. Many domestic workers agree to work for a weekly flat rate based on general work hours that are frequently extended beyond the original work schedule. These weekly flat rates seem appealing at first, but as Irene Jor, a domestic worker organizer noted, "They end up working way more hours and when they actually calculate their wages they realize they are making maybe less than the minimum wage or way less than what they thought they were making per hour."<sup>112</sup>

Even with the passage of the Domestic Workers' Bill of Rights, which guarantees overtime pay, many workers still cite a lack of overtime pay as a major ongoing challenge.<sup>113</sup> A lawyer who oversaw legal clinics for two years following the passage of the law said that she had, "never met a single domestic worker who didn't have an overtime violation."<sup>114</sup>

Within these long hours, domestic workers are asked to take on additional responsibilities without increased compensation. For example, a domestic worker from Nepal reported starting off as a nanny and then was asked to cook and clean the home in addition to caring for the child. She did not receive a raise for her increased workload.<sup>115</sup>

Lack of notice of termination is also a common complaint among domestic workers. In a focus group with Caribbean domestic workers, several workers reported either personally experiencing or hearing about a worker who ended the work week on a Friday and was asked to not return to work on Monday. Without advanced notice of termination, workers scramble to find new employment especially when abrupt termination is not coupled with severance pay.

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<sup>109</sup> Claire Hobden, "Winning Fair Labour Standards for Domestic Workers: Lessons Learned from the Campaign for a Domestic Workers' Bill of Rights in New York State," (Geneva: ILO, 2010), 29.

<sup>110</sup> 29 U.S.C. § 213(b)(21)

<sup>111</sup> Civil Rights act of 1964, Title VII, Section 2000e (b).

<sup>112</sup> Phone interview with Irene Jor, New York Organizer, National Domestic Workers Alliance in New York City.

<sup>113</sup> Interviews with Adhikaar, Damayan, and Caribbean domestic worker focus groups.

<sup>114</sup> Phone interview with Nicole Hallett, Former Lawyer, Urban Justice Center.

<sup>115</sup> Interview with Narbada Chhetri, Director of Organizing and Advocacy and Luna Ranjit, Executive Director, Adhikaar in Queens, New York.

Undocumented workers in particular, are ineligible for unemployment benefits.<sup>116</sup> Lack of notice is even more troubling for live-in domestic workers “because you're made unemployed and homeless at the same time.”<sup>117</sup>

Domestic workers often describe feeling disrespected by their employer as one of the most frustrating aspects of their work.<sup>118</sup> A few domestic workers noted that employers may view them as uneducated. Abigail, a domestic worker from Barbados who has been a nanny in New York City since 1990, said the seven year old she takes care of asked her, “Do they have TVs in Barbados?” Abigail noted that many employers think that because domestic workers come from developing countries, they do not know how to run a dishwasher, pull up the blinds, or do other basic things. Abigail said, “How do you expect me to provide really good care for your child when you just belittled me?” She went on to question the logic of this disrespect, “How can employers think the workers are not educated but then expect them to discipline their children and raise them responsibly? There’s a major disconnect there.” Abigail also explained that many employers prefer to hire domestic workers who are less assertive about their employment rights. She explained that, “If I go into an interview and share my expectations and show that I know my rights under the law, I know I won’t be getting a call back even with all of my experience. Employers don’t want a worker who is going to speak up.”

For undocumented migrant workers, the fear of deportation prevents many workers from asserting their rights on the job even though they are protected under the new law. Priscilla Gonzalez, a former Executive Director of Domestic Workers United, observed that a lot of Latina domestic workers face language and documentation issues when they negotiate with employers. A Mexican domestic worker from Brooklyn noted that for those workers who are aware of the new protections, “many still do not exercise their rights out of fear of losing their jobs.”<sup>119</sup> Similarly, Leah Obias, an organizer with Damayan, a Filipino migrant workers organization, reported that the “vast majority of the domestic workers we work with are undocumented...they deal with the constant threats of deportation.” Filipina domestic workers, some of which are also labor trafficking victims, report having their passports or other important documents withheld by their employers. These labor trafficking victims experience the harshest working conditions with pay well below the minimum wage, as well as various forms of physical and verbal abuse.<sup>120</sup>

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<sup>116</sup>New York State Department of Labor. “Facts for Domestic Workers,”(2010).

<<https://labor.ny.gov/legal/laws/pdf/domestic-workers/facts-for-domestic-workers.pdf>>.

<sup>117</sup> Phone interview with Irene Jor, New York Organizer, National Domestic Workers Alliance in New York City.

<sup>118</sup> Harmony Goldberg, *Our Day Has Finally Come: Domestic Worker Organizing in New York City*. Dissertation and Thesis. CUNY Graduate Center, 2014. <<http://works.gc.cuny.edu/etd/422>>, 21.

<sup>119</sup> Contessa Gayles. "New Visibility for “the Work That Makes All Other Work Possible,” Women's Media Center, 23 Jan. 2014. 10 Apr. 2015. <<http://www.womensmediacenter.com/feature/entry/new-visibility-for-the-work-that-makes-all-other-work-possible>>.

<sup>120</sup> Interview with Leah Obias, Community Organizer, Damayan Migrant Workers Association in New York City.

## Employer Perspectives

This study revealed interesting tendencies of organizing among employers of domestic workers. In-depth discussions with representatives of Jews for Racial and Economic Justice (JFREJ), which organizes employers mostly on Manhattan’s Upper West Side, and Park Slope Parents (PSP), which is active in Brooklyn’s Park Slope neighborhood, reveal the employer perspective on the implementation challenges of the law and the potential employer organizations have to reach win-win situations.

Rachel McCullough, an organizer of domestic worker employers at Jews for Racial and Economic Justice (JFREJ), noted that domestic workers *and* employers of domestic workers are hurt by the lack of formalization of the workforce:

“What we found, the more we engaged employers, is that they want to do the right thing. They want their worker to have dignity and respect on the job but they don't know what the right thing is. With no standards out there employers are flying by the seat of their pants. You have sleep-deprived new parents having hushed, ashamed conversations with each other saying things like, ‘What do you pay your nanny?’”<sup>121</sup>

McCullough acknowledged that this was not the case for all employers explaining that JFREJ’s membership is very progressive and supportive of strong workers rights protections. JFREJ’s successful employer organizing model was uplifted by the idea that “these are the workers that care for the things that are most precious to us. They want to know that the person who’s caring for their home, caring for their children, is, herself, well-rested and is making a living wage and gets the support that she needs to care for her own family.” At the same time, while some employers want to do the right thing, they also struggle to afford the costs of fairly compensating their domestic worker. McCullough painted a broader picture of domestic worker employers, who are in need of services, but not necessarily wealthy. “It’s often people with disabilities, low income people, and seniors that are the most hurt by the system as it currently stands.” The “system” she referred to is the broader system of care that is largely private and not a function of the U.S. social safety net. This lack of public care services and social protections, also known as the “care deficit” is precisely what creates the demand for domestic workers. She said that advocates, employers, and the government must work together to “strengthen and support this workforce and figure out how to support individuals and families to afford it.” This is particularly important to JFREJ as they have a growing number of members who require eldercare providers for family members or for themselves.

The President of Park Slope Parents (PSP) echoed similar themes about formalization at a “nanny training” for prospective employers. One representative from PSP recounted a story about how she used to refer to a former nanny of hers as “family” thinking it was a compliment. One day the nanny told her it was an insult. She was shocked, not realizing that it could be perceived as disrespectful, but she used the story to illustrate that domestic work is a formal employment relationship.

Like JFREJ, PSP is a progressive group with a broad interest in social and economic justice. Notably, although 26 people registered for a \$35 fee to attend a two and a half hour, 70-slide

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<sup>121</sup> Interview with Rachel McCullough, organizer of domestic worker employers at Jews for Racial and Economic Justice in New York City.

training on the laws, best practices, and neighborhood norms for employing a domestic worker, only three of them raised their hands when asked if they knew about the Domestic Workers' Bill of Rights. During the presentation, the presenter repeatedly emphasized that employers should build systems of respect by writing work contracts, so that any changes to work responsibilities could be negotiated clearly within the bounds of an employment relationship. She urged employers to pay "on the books" for their own protection, but also to formalize their obligations under the law. The training drew on statistics from the annual "nanny survey" which the organization administers to its 5,000 plus members. The 2013 survey is based on 750 replies and includes the following key findings:<sup>122</sup>

**Figure 7: New York City's Park Slope Parents "Nanny Survey" Findings<sup>123</sup>**



- **\$15.79** is the average hourly wage
- **31% pay a weekly amount** (i.e., an amount which does not vary for a certain number of hours or vary week to week)
- **45% pay "weekly plus"** (i.e., a set amount plus more if the nanny works more time than agreed upon)
- **24% pay by the hour** (i.e., payment varies depending on how many hours the nanny worked)



- **49% have a set of written expectations** or work agreement. This is up from 39% in 2011
- **23% keep written records of the hours a nanny works.** Only 4% of all employers have the nanny sign a timesheet.



- **13.5 days paid time off** per year on average are agreed upon (including vacation, sick and personal days, but not holidays)
- **19.6 actual days off taken** per year on average are by nannies
- **85% of employers pay regular salary during employer vacation.** Whereas, 8% of employers do not pay salary during their vacations.
- **54% of employers try to allow nannies to schedule their own paid vacation.** While 44% ask nannies to schedule their paid vacation when the employers are on vacation).

Park Slope Parents also recommends other best practices not required by the law such as an annual raise (+\$1/hour), an annual bonus (one week's pay), paid holidays, paid vacation, a MetroCard, notice of termination (2 weeks spelled out in the contract), and severance pay (typically one week for every year of employment). Most of the training participants' questions revolved around paying unemployment insurance, properly filing taxes, and how to find a suitable nanny. Several people asked about health insurance, which is not covered by the law. In addition to the law, the presentation focused on crafting the right relationship so that both the employer and employee feel comfortable. During the training, a presenter encouraged employers to determine in advance what kind of person they want working for them, explaining

<sup>122</sup> Park Slope Parents, "The Park Slope Parents' Nanny Compensation Survey: Results," (2014): 7-15.

<sup>123</sup> Ibid.

that a mismatch in expectations may lead to mutual dissatisfaction. The presenter described three nanny archetypes: *Robin* (a sidekick), *Mini-me* (a follower of instructions), and *Housewife* (an all-purpose mini-me who is self-directed). She urged employers to be honest with themselves and prospective employees, putting a premium on communication.

## Implementation of the Law

To assess the implementation of the NYS Domestic Worker's Bill of Rights, this section will first outline the key players involved in raising awareness about the rights and obligations under the law and thereafter examine the different avenues for enforcement. The assessment will conclude with an analysis of the protection gaps witnessed since the implementation of the law.

### Awareness Raising

The New York State Department of Labor (NYS DOL) is the main agency tasked with implementing the Domestic Workers' Bill of Rights. In the several months following the passage of the law, the NYS DOL informed domestic workers and employers about the updated rights and obligations through fact sheets posted on the NYS DOL website. The NYS DOL developed and translated these fact sheets for domestic workers and employers into English, Spanish, French, Haitian-Creole, Chinese, Hindi and Tagalog.<sup>124</sup>

Despite efforts to translate the fact sheets into multiple languages, the NYS DOL outreach efforts were too general and did not target specific groups and communities. Therefore, the domestic workers' organizations that actively participated in the passing of the law knew that the NYS DOL efforts alone would not effectively reach workers and employers.<sup>125</sup> As a result, they developed their own outreach and education strategies to inform domestic workers and employers of domestic workers about the new law.

### Domestic Workers' Organizations

#### *Domestic Workers United (DWU)*

Domestic Workers United (DWU) is an organization of "Caribbean, Latina, and African nannies, house cleaners, and elder caregivers in New York"<sup>126</sup> that has worked towards achieving equality for domestic workers' labor standards since 2000. DWU along with the NY Domestic Workers Justice Coalition launched the campaign that led to the passage of the Domestic Workers' Bill of Rights.

Leaders of DWU knew that the New York State Department of Labor's plan for implementing the law would not be adequate. Since domestic workers are a diffuse and isolated work group and employees do not simply congregate on the "shop floor," DWU organizers realized a broader outreach strategy would be necessary to reach domestic workers in New York City.<sup>127</sup> DWU's outreach strategy included a *Know Your Rights Campaign and the Ambassador Program* to educate domestic workers on their rights.

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<sup>124</sup> "Domestic Workers' Bill of Rights," New York State Department of Labor, 23 Apr. 2015. <<https://labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm>>.

<sup>125</sup> Interviews with NGOs Adhikaar, Damayan, and Domestic Workers United in New York City.

<sup>126</sup> "Home," Domestic Workers United, 18 Apr. 2015. <<http://www.domesticworkersunited.org>>.

<sup>127</sup> Interview with Priscilla Gonzalez, former Executive Director of Domestic Workers United.

*Know Your Rights Campaign* – DWU’s organizing work did not conclude with the passage of the Domestic Workers’ Bill of Rights in 2010. DWU established the Know Your Rights Campaign for domestic workers in New York City. DWU representatives distributed paper leaflets in parks to domestic workers, posted updates and information in multiple languages on their website, established an informational hotline, and posted instructional videos.

*“We have a dream  
that one day all work  
will be valued equally.”*

– Domestic Workers United,  
New York City

*DWU Ambassador Program* – Prior to the Ambassador Program, DWU disseminated information to their members by visiting churches, playgrounds, and other locations where there was a high potential for domestic workers of color to congregate. However, leaders of DWU quickly realized that they lost contact with domestic workers through this informal communication channel. Therefore, DWU trained 13 domestic worker leaders to serve as primary points of contact, provide workshops on the provisions of the law, and report violations of the law to DWU.<sup>128</sup> The neighborhoods targeted included the Upper West Side, Upper East Side, Tribeca, and Park Slope.<sup>129</sup>

#### *Damayan Migrant Workers Association*

Damayan has served low-wage Filipino migrant workers in New York City and New Jersey since 2002. Their constituency largely includes domestic workers; however, the organization also works with drivers, guest workers, and labor trafficking survivors from the Philippines. Damayan frequently hosts “Know Your Rights” workshops for its current 1,100 active members.<sup>130</sup>

#### *Adhikaar*

Founded in 2005, Adhikaar serves the Nepali-speaking immigrant workers in New York City. The organization not only provides resources for Nepali-speaking domestic workers, but also provides services for nail salon, taxi, and restaurant workers. In 2007, Adhikaar established a community center in Woodside, NY that is open from Sundays through Thursdays, from 1:00 pm to 6:00 pm.<sup>131</sup> The community center serves as both an information center and training facility for Nepali-speaking domestic workers. Domestic workers can participate in legal workshops or train other domestic workers to be peer educators. Adhikaar also provides English classes called “English for Empowerment” as a method to help workers improve their employment negotiation skills.<sup>132</sup>

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<sup>128</sup>Harmony Goldberg, *Our Day Has Finally Come: Domestic Worker Organizing in New York City*. Dissertation and Thesis. CUNY Graduate Center, 2014. < <http://works.gc.cuny.edu/etd/422>>.

<sup>129</sup> Interview with Priscilla Gonzalez, former Executive Director of Domestic Workers United in New York City.

<sup>130</sup> Interview with Leah Obias, Community Organizer of Damayan Migrant Workers Association in New York City.

<sup>131</sup> “About Us,” Adhikaar, 18 Apr 2015. < <http://www.adhikaar.org/about/>>.

<sup>132</sup> Interview with Luna Nanjit, Executive Director, and Narbada Chhetri, Director of Organizing and Advocacy, of Adhikaar in New York City

## Employer Organizations

### *Jews for Racial and Economic Justice (JFREJ)*

Jews for Racial and Economic Justice (JFREJ) has organized employers of domestic workers since 2003. JFREJ was integral to the passage of the Domestic Workers' Bill of Rights. Through their actions during the Shalom Bayit (Peace in the Home) Campaign, they organized synagogues, rabbis, Jewish legislators, employers, and the Jewish community to lobby for the law working in conjunction with DWU.<sup>133</sup> Their involvement showed that the Domestic Workers' Bill of Rights had the support of both employers and domestic workers.

In 2010, leaders from the Employers for Justice Network, which is part of the Jews for Racial Justice, went on to found Hand in Hand.

### *Hand in Hand*

Founded in 2010, Hand in Hand is a national network of employers of domestic workers (i.e., nannies, home attendants, and house cleaners), who believe “dignified and respectful working conditions benefit worker and employer alike.”<sup>134</sup> Hand in Hand established fair standards that exceed the minimum requirements of the law. These standards are communicated through the Fair Care Pledge and reference materials posted on their website.

*The Fair Care Pledge* – The Fair Care Pledge is a partnership between Hand in Hand and the National Domestic Workers Alliance. The pledge articulates three employment best practices for hiring a domestic worker: fair pay, clear expectations, and paid time off. Employers who participate in this initiative agree to uphold the three principals when working with their domestic workers. Hand in Hand also follows up with signers of the pledge to provide additional information and resources.

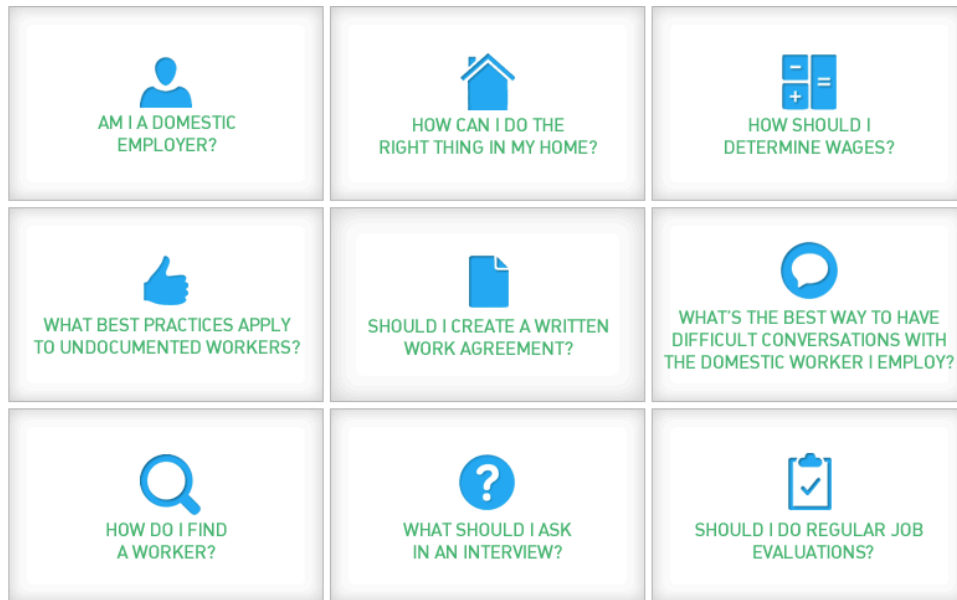
*Reference Materials* – The Hand in Hand website also provides employers with information on best practices for employing domestic workers. Figure 8 below shows a few categories from their Q&A page. Additionally, Hand in Hand provides an interactive checklist for employers to help them assess the working conditions in their home.

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<sup>133</sup> “Justice for Domestic Workers,” Jews for Racial and Economic Justice, 24 Apr. 2015 <<http://jfrej.org/justice-domestic-workers>>.

<sup>134</sup> “Q&A,” Hand in Hand, 18 Apr. 2015. <<http://domesticemployers.org/qa/>>.

Figure 8: Hand in Hand Resources for Employers<sup>135</sup>



### Formal Enforcement

The Domestic Workers' Bill of Rights provides domestic workers with both labor and human rights protections. Domestic workers bear the responsibility to assert these rights and inform the state if their rights are being violated. Depending on the topic of complaint, a domestic worker must file a claim with either: 1) the Department of Labor for complaints on violations against labor standards; or 2) the New York State Division of Human Rights for complaints about harassment or discrimination.<sup>136</sup> This section provides information on the formal enforcement channels, as well as on authorities that are not yet part of the enforcement infrastructure.

Domestic workers must call or visit the appropriate division/department to file a complaint, and are protected by law against employer retaliation for filing complaints. If an employer retaliates against an employee for filing a complaint with either the Department of Labor or the Division of Human Right, the employer will be a fined.<sup>137</sup> Although the law articulates penalties for retribution against domestic workers, the law does not clearly outline penalties for violations of labor rights.

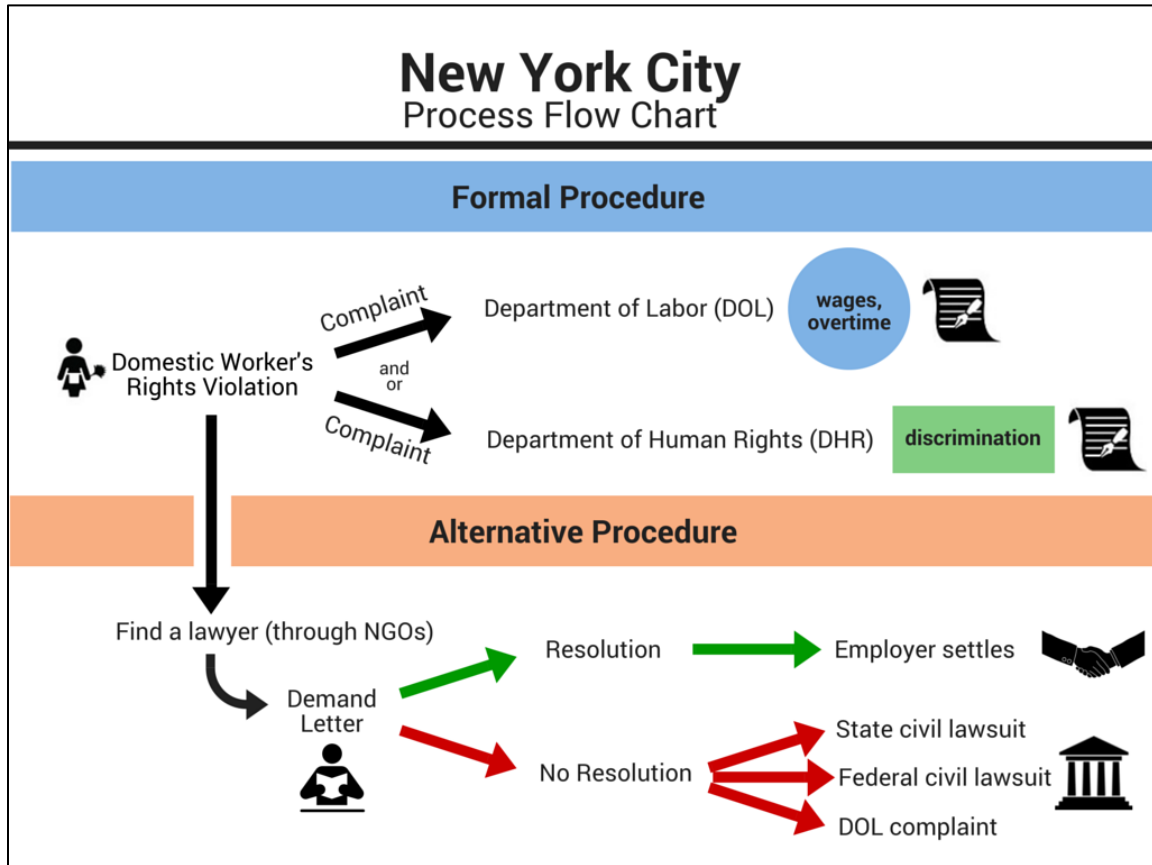
The section and Figure 9 below briefly describe the organizations and processes relevant to domestic workers' complaints.

<sup>135</sup> Ibid; Screen Shot of Hand In Hand Q&A Webpage.

<sup>136</sup> "Facts for Domestic Workers," 2011, New York State Department of Labor. <<https://labor.ny.gov/legal/laws/pdf/domestic-workers/facts-for-domestic-workers.pdf>>.

<sup>137</sup> Ibid.

Figure 9: Process for a Domestic Worker to File a Complaint in New York



*New York State Department of Labor (NYS DOL)*

The NYS DOL helps workers collect wages owed to them and enforces regulations on days of rest. Through filing a “Claims for Unpaid Wages (LS 223)” form with a branch of the NYS DOL, domestic workers can collect unpaid wages, withheld wages, and illegal deductions from their employers.<sup>138</sup> Under the current law, these claims can only be made for unpaid wages going back two years.<sup>139</sup> The complaint process for unpaid wages, such as unpaid overtime, has taken over two years to adjudicate in multiple domestic worker complaint cases.

*Division of Human Rights*

The NYS Division of Human Rights assists workers who have been sexually harassed during their employment or harassed because of their gender, race, religion, or national origin. These complaints must be filed with the DHR within one year of the discrimination or alleged act. After this time has elapsed, the complaint must be filed directly with a court within three years of the alleged act. Between 2013 and 2014 the Division of Human Rights received 17 complaints from domestic workers. Three of the filed complaints received a probable cause

<sup>138</sup> “Labor Standards – Wage and Hour Law,” New York State Department of Labor, 27 Apr 2015. <<https://www.labor.ny.gov/workerprotection/laborstandards/workprot/lshmpg.shtm>>.

<sup>139</sup> Interview with Haeyoung Yoon, Deputy Program Director of the National Employment Law Project in New York.

determination.<sup>140</sup> For the 17 cases filed between 2013 and 2014, all cases were adjudicated at least six months from the time the claim was submitted, which is six times faster than the processing time for NYS DOL complaints filed by domestic workers.

### *Mayor's Office of Immigrant Affairs*

The Mayor's Office of Immigrant Affairs (MOIA) promotes the well being of immigrant communities by recommending policies and programs to help them assimilate into civic, economic and cultural life in New York City. MOIA acts as a liaison between community-based organizations and immigrants to help address migrants' needs.

Although the vast majority of domestic workers in New York City consist of migrant workers, MOIA has not actively participated in the enforcement of the Domestic Workers' Bill of Rights. However, representatives from MOIA expressed interest in becoming more involved in the issues of domestic workers.<sup>141</sup> The Commissioner, Nisha Agarwal, spoke at a hearing about domestic workers involved in labor trafficking in February 2015. MOIA currently hosts presentations on services for immigrant and migrant workers and has a services line connected to 311. Greater collaboration between MOIA, the NYS DOL, and grassroots organizations would help to expand awareness-raising efforts and enforcement.

### **Grassroots Enforcement**

While advocating for the bill and in the months after it passed, domestic workers' organizations realized that the NYS DOL would not have the capacity to handle the additional cases of domestic worker complaints.<sup>142</sup> Furthermore, domestic workers continue to hesitate to approach the NYS DOL with formal complaints out of fear of retribution. They prefer to approach their respective worker organizations for help due to the strong relationship between organizers and domestic workers. Harmony Goldberg explains "they feel more secure and at ease, knowing they have somewhere to tell their stories."<sup>143</sup> Recognizing their members' needs and the shortfalls of the formal process, domestic workers' organizations adopted alternative methods to help their members enforce their rights and attain justice.

Domestic workers' organizations such as Damayan and DWU, established legal clinics and individual referrals through partnerships with nonprofit organizations that provide legal consultation and representation, such as the Urban Justice Center and the Legal Aid Society. Upon evaluating cases during intake, worker organizations refer domestic workers to lawyers if there is a clear labor law violation, such as unpaid overtime or lack of days off.

As an alternative enforcement mechanism, domestic workers consult with lawyers and then decide an appropriate approach based on the case. Most often, lawyers send a demand letter to an employer to articulate the complaint and the compensation amount in question. The lawyer's next steps depend on the employer's response to the demand letter. If the employer responds to the request and is willing to negotiate with the domestic worker to establish a mutually acceptable compensation amount, a settlement is reached. However, if the employer

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<sup>140</sup> Data provided by New York State Division of Human Rights in response to FOIL request submitted March 5, 2015.

<sup>141</sup> Interview with Elisa Ghang, Lawyer and Legal Fellow of MOIA in New York.

<sup>142</sup> Harmony Goldberg, *Our Day Has Finally Come: Domestic Worker Organizing in New York City*. Dissertation and Thesis. CUNY Graduate Center, 2014. < <http://works.gc.cuny.edu/etd/422>>.

<sup>143</sup> *Ibid*, 259.

does not respond or the counter offer is unacceptable, the lawyer and client pursue additional action. If the compensation amount owed is large or the discrimination allegation is egregious, lawyers recommend the client file a federal lawsuit, which are often more swiftly adjudicated. However, if the amount owed is smaller, the lawyer may advise the client to file a formal complaint with the Department of Labor. Nicole Hallett, a former lawyer with the Urban Justice Center, tried to resolve as many cases as possible in the negotiation phase between the employer and the employee. She explained that the NYS DOL adjudication process often takes 18 months to three or more years to investigate and provide compensation, which is not a practical option for the domestic worker.

Hallett recalled a client who sent a demand letter to her former employer requesting compensation for unpaid overtime. In response to this demand letter, the employer provided a very low counter offer. Although Hallett advised her client to accept the low offer, the domestic worker chose to file an official complaint with the Department of Labor because she wanted the opportunity to voice her case in court. After two years of waiting for a decision the domestic worker in this case only received \$50

more than the original low counter offer, due to the NYS DOL's conservative calculation of overtime compensation.<sup>144</sup>

*“I'm then counseling my clients to take less money than they are owed because the alternative is nothing, basically.”*

– Nicole Hallett, Former Lawyer with Urban Justice Center

Domestic workers' organizations also actively help their members obtain unpaid compensation. After a worker is terminated, Adhikaar hosts negotiations with the worker and their employer to get the employer to pay any unpaid wages. For those workers that plan to continue working for their employers, Adhikaar trains domestic workers on negotiation techniques for fair compensation and rights to ensure that the entrance of an outside party does not damage the employer-employee relationship.<sup>145</sup>

Nicole Hallett described three kinds of employers that violate the law.

1. Employers who are familiar with the law and knowingly take advantage of their employees.
2. Employers who see their relationship with the domestic worker as informal, who are not familiar with the law, and have not considered their obligations under the law.
3. Employers who are familiar with the law and try to comply, but fail in execution.

Worker organizations tailor their approach when interacting with these different types of employers to ensure an optimal solution for the employer and employee. Employers that are unfamiliar with the law or have good intentions (types #2 and #3) respond better to awareness-

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<sup>144</sup> Interview with Nicole Hallett, former Lawyer with the Urban Justice Center in New York City. We submitted Freedom of Information Law request to NYS DOL on March 5, 2015 to obtain information on adjudications and outcomes, however this information was not provided.

<sup>145</sup> Interview with Luna Ranjit, Executive Director, and Narbada Chhetri, Director of Organizing and Advocacy, of Adhikaar in New York City.

raising campaigns and mediation through worker organizations. In contrast, worker organizations use shaming tactics to raise awareness among employers who knowingly ignore the law. Leah Obias, an organizer with Damayan, explained that the organization mobilizes its domestic workers members to protest outside employers' homes during particularly difficult court cases. Because the employers' transgression is publicized before their neighbors and peers, employers are more willing to reach out-of-court settlements in favor of the domestic workers.

Worker organizations in New York City play a major role in fighting for the labor and human rights of domestic workers. These organizations provide not only valuable services, but also a safe place, or a "home away from home" for domestic workers to congregate and organize around the movement to increase the standards of the domestic worker industry.<sup>146</sup> Within the Nepali-speaking community, "unity has been a powerful tool."<sup>147</sup> Since they have begun organizing the Nepali-speaking community, staff and members of Adhikaar have witnessed an increase in the awareness and enforcement of labor standards. For example, members of Adhikaar would earn about \$350 per week for six to seven days of work before the law passed and organizing efforts began. Now, active members are working together and counseling members against accepting less than \$500 per week.<sup>148</sup>

## Gap Analysis

The passage of the Domestic Workers' Bill of Rights conveyed that domestic and care work is real work in the eyes of the government and established the state of New York as a leader in the global movement to shift the paradigms of domestic work. The new law increased the morale and empowerment of domestic workers. Nicole Hallett attests to domestic workers' increased capacity and willingness to assert their rights: "I got a lot of people who wouldn't come forward before the bill, because they just didn't think they were protected." Although the Domestic Workers' Bill of Rights was an important first step towards formalizing the industry, more awareness raising and strengthening of enforcement mechanisms is required to realize the law's full potential.

## Limitations of the Law

Although the Domestic Workers' Bill of Rights increased the formalization of the industry, domestic work remains a one-on-one relationship between employers and domestic workers. Employers and domestic workers both continue to struggle in their attempts to define formal working arrangements. Furthermore, implementation efforts to both raise awareness and enforce the law have suffered from the government's and worker organizations' lack of resources and capacity.

The NYS DOL website provides fact sheets (in several languages) for domestic workers and employers about their rights and obligations under the law. Although the fact sheets provide information on the provisions of the new law, it does not mention other pertinent legal information about employment and contract agreements. According to Nicole Hallett, 50% of

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<sup>146</sup> Interview with Luna Ranjit, Executive Director, and Narbada Chhetri, Director of Organizing and Advocacy, of Adhikaar in New York City.

<sup>147</sup> Ibid.

<sup>148</sup> Ibid.

the domestic worker cases she reviewed contained a contract violation, an indication that these fact sheets lack clarity and effectiveness.

Effective implementation of the law depends both on the political will and capacity of institutions to enforce the law. When the law was first passed, the NYS DOL stated domestic worker cases would be prioritized for six months after the law passed, meaning that domestic worker complaints would be

immediately addressed and investigated within six months of filing. Although the Department of Human Rights has been relatively successful in processing domestic workers' complaints in a timely manner, cases filed with the NYS DOL have taken years to resolve. It is possible that the NYS DOL seeks to maximize its impact by focusing on labor complaints from a large group of workers or complaints against large companies. Although the prioritization of domestic worker cases was stated, they were not handled by the NYS DOL in the proposed time frame. Even when these cases are investigated and come to a resolution, there is a possibility that the damages awarded to the domestic worker will be well below the contested amount.

*“Someone had been promised \$15 an hour, then they got their paycheck and it was \$10 an hour. That’s not a minimum wage violation. It’s a contract violation, because they were promised \$15 an hour.”*

– Nicole Hallett, Former Lawyer with Urban Justice Center

### **Intended and Unintended Consequences**

As previously stated, the Domestic Workers' Bill of Rights has increased the overall amount of complaints filed against employers (i.e., including demand letters, lawsuits, DHR complaints, and NYS DOL complaints). This empowerment of domestic workers has gone beyond them just filing complaints. Conversations with Caribbean domestic workers revealed that domestic workers have been using the law proactively to communicate their rights to employers during the hiring process. These actions have resulted in some domestic workers receiving higher hourly and weekly pay than the standards set by the minimum wage, as well as open discussions between employers and employees for paid time off.

The Domestic Workers' Bill of Rights also created unforeseeable consequences. The law clearly states that overtime must be paid to domestic workers who work more than 40 hours per week or more than 44 hours per week if they live in the home of their employers. However, in order to circumvent having to pay overtime, some employers hire multiple part-time domestic workers. Focus group discussions with Caribbean domestic workers revealed that many employers are not hiring workers for more than 35 hours per week as a result of the law. One Caribbean domestic worker stated that she worked 20 hours per week for two different employers. Since the law counts overtime on a weekly basis instead of daily, domestic workers may work long shifts (12 to 16 hours per day) without receiving overtime compensation.

## V. Comparative Analysis

This section draws conclusions through a comparison of the two case studies of New York City and São Paulo. An analysis of the two cities highlights general trends and outliers to further our understanding of how different legal instruments and protection environments influence the rights of domestic workers and the formalization of domestic work.

### Complaint-Driven Enforcement

Enforcement regimes in New York State and Brazil rely on a complaint-driven process, which requires workers to come forward and file a formal complaint with the relevant authority.<sup>149</sup> The complaint-driven system is not unique to domestic workers, but it is insufficient to enforce their rights. Since domestic workers are often alone in a private home as opposed to a communal work setting, filing a complaint is not truly anonymous; doing so can jeopardize their job. Additionally, the majority of domestic workers in New York City are migrant workers—many of whom do not have valid immigration status and thus hesitate to speak up for fear of deportation.<sup>150</sup> Since all domestic workers depend on good references to secure future employment, they also may hesitate to express dissatisfaction with a current employer. These conditions create a culture of fear, where domestic workers are unwilling and unable to “complain” to government agencies and assert their rights.

#### *Government Agencies Lack Proactive Enforcement Protocols*

In New York and Brazil, domestic workers are not a priority for the respective labor departments.

Haeyoung Yoon previously worked as a lawyer at the Urban Justice Center and frequently partnered with Domestic Workers United. She recalls that there was initially strong political will in the Department of Labor to “be better and do the right thing” by enforcing the Domestic Workers’ Bill of Rights.<sup>151</sup> After the bill passed, then-Governor Paterson issued a directive to prioritize complaints from domestic workers for the first six months. However, Yoon believes that few domestic workers filed complaints, and the issue lost priority status.<sup>152</sup> After Governor Cuomo took office in 2011, labor issues took a back seat to more business-friendly policies, and the administration even changed the existing statute so that employees could only sue for two years worth of back wages as

*“Frankly, I always felt like when we had to file a DOL claim, I had failed as a lawyer.”*

– Nicole Hallett, Former Lawyer with Urban Justice Center

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<sup>149</sup> Interview with Haeyoung Yoon, Deputy Program Director, National Employment Law Project in New York City.

<sup>150</sup> Domestic Workers United, and DataCenter, *Home Is Where the Work Is: Inside New York’s Domestic Work Industry*, (New York: Domestic Workers United and Data Center, 2006), 2.

<sup>151</sup> Interview with Haeyoung Yoon, Deputy Program Director, National Employment Law Project in New York City.

<sup>152</sup> Ibid.

opposed to the previous six years. Furthermore, Nicole Hallett, a former lawyer at the Urban Justice Center, reported that investigations through the NYS DOL in 2011 were still pending when she left in 2014.<sup>153</sup> In fact, investigations that were supposed to take a maximum of six months to complete often required a full year before the NYS DOL could facilitate a mediation between an employer and domestic worker (which could require another 12 to 18 months to conduct) and issue an order to comply (which required another six months). Hallett voiced frustration with the NYS DOL processes, stating, “Frankly, I always felt like when we had to file a DOL claim, I had failed as a lawyer.” She strongly encouraged her domestic worker clients to accept lower settlement offers from an employer rather than file a complaint with the NYS DOL, because:

“The best case scenario, in 18 months [the client] might get some money. Worst case scenario, three years later, [the client] may still have nothing to show for it. All [the client has] is a piece of paper that says [she is] owed a certain amount of money.”<sup>154</sup>

The complaint-driven system fails on all fronts, because it relies on the false assumptions that domestic workers are willing and able to file a complaint and that the labor agency is willing and able to investigate and process that complaint.

### *Labor Agencies Remain Under-Resourced*

After the passage of laws in New York and Brazil, neither labor department added staff or resources to accommodate an increase in complaints from domestic workers.<sup>155</sup> However, in Brazil the regional labor inspector reports that he has not handled any complaints personally, although his department has received a few.<sup>156</sup> Unfortunately, the NYS DOL declined to release data about the number of complaints it received, or make someone available for an interview. Regardless, the consensus among local politicians, NGOs, and lawyers is that NYS DOL has little capacity to enforce the law. Both Priscilla Gonzalez, a former Executive Director with DWU, and Luna Ranjit, the Executive Director of Adhikaar, describe how NYS DOL attempted to publish outreach materials about the new law, but ultimately distributed poorly translated materials that were not culturally relevant.<sup>157</sup> For example, Ranjit explains that NYS DOL translated information about the law for employers into Nepali; not only was the translation poor, but also people who employ Nepali domestic workers are largely Hindi-speaking.<sup>158</sup>

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<sup>153</sup> Interview with Nicole Hallett, Former Lawyer, Urban Justice Center in New York City.

<sup>154</sup> Ibid.

<sup>155</sup> Interview with a labor inspector at the Regional Office of the Ministry of Labor and Employment in São Paulo; Interview with Haeyoung Yoon, Deputy Program Director, National Employment Law Project in New York City.

<sup>156</sup> Interview with a labor inspector at the Regional Office of the Ministry of Labor and Employment in São Paulo.

<sup>157</sup> Interview with Priscilla Gonzalez, Former Executive Director, Domestic Workers United in New York City;

Interview with Luna Ranjit, Executive Director, Adhikaar in New York City.

<sup>158</sup> Interview with Luna Ranjit, Executive Director, Adhikaar in New York City.

### *Court Filings Meet with More Success But Can Be Cost Prohibitive*

Contacts at NGOs in both São Paulo and New York City spoke more favorably of the court's ability to process domestic workers' complaints; however, they note that not all domestic workers are able to access the courts due to cost and fear of retribution from employers.

The state court system in New York is notoriously backlogged, so a lawsuit can take more than a year to resolve. Instead, lawyers Haeyoung Yoon and Nicole Hallett often advised their clients at the Urban Justice Center to file a lawsuit in the federal courts. Nicole explains that the federal court could be cost prohibitive if the client sought only "a few thousand dollars" because the client would "have to pay \$1,500 [in filing fees] during the lawsuit."<sup>159</sup>

Labor court judges Ivete Ribeiro and Andrea Brody cite the high number of lawsuits filed in each court per year (around 3,000 lawsuits) in São Paulo<sup>160</sup> and large number of people who visit the Labor Court in Barra Funda every day (around 25,000 people) as an indication that "people trust in the judiciary."<sup>161</sup> However, they also reason that the percentage of lawsuits filed by domestic workers is very small, and outside of the cities, even fewer domestic workers would pursue a court option because "employers often know each other" in smaller towns and workers fear retribution.<sup>162</sup> Similarly, domestic workers in New York City often hesitate to file lawsuits because they cannot remain anonymous like those who file a class action suit.

After being terminated recently, Helena, a domestic worker in São Paulo, told her employer that she would file a lawsuit. It was an empty threat, which Helena used to increase her bargaining power. Since she needs a letter of reference to find new work, she had no plans to actually go through with it.<sup>163</sup> Similarly, in New York City, the threat of a lawsuit is more powerful than the lawsuit itself. As a lawyer at the Urban Justice Center, Nicole Hallett often aimed to resolve employment disputes with a demand letter before going

*"I want to be able to fight hard for my clients but if I don't have any alternative that I can threaten an employer with that is at all realistic, then my bargaining power is lower for my clients."*

– Nicole Hallett, Former Lawyer with Urban Justice Center

to court; the demand letter included an implicit threat that a failure to pay the demanded wages would result in a lawsuit or a NYS DOL complaint.<sup>164</sup> Although the courts are slow, the threat of legal action is a powerful enforcement tool, largely made accessible to domestic workers through community-based and worker organizations.

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<sup>159</sup> Interview with Nicole Hallett, Former Lawyer, Urban Justice Center in New York City; Interview with Haeyoung Yoon, Deputy Program Director, National Employment Law Project in New York City.

<sup>160</sup> There are 90 courts in the city of São Paulo.

<sup>161</sup> Interview with Ivete Ribeiro, Judge, and Andrea Brody, Judge, Regional Labor Court in São Paulo.

<sup>162</sup> Ibid.

<sup>163</sup> Interview with Helena, Domestic Worker in São Paulo.

<sup>164</sup> Interview with Nicole Hallett, Former Lawyer, Urban Justice Center in New York City.

## Worker Organizations in São Paulo and New York City

As Naila Kabeer found through her research, workers' organizations fill the enforcement gap in both cities by supporting domestic worker with claims-making and asserting their rights.<sup>165</sup> In São Paulo, the Domestic Workers' Union<sup>166</sup> provides outreach, advice, and mediation services to great effect. The union has helped dozens of domestic workers to obtain a settlement or seek legal recourse.<sup>167</sup> In fact, labor lawyer, Ricardo Pereira de Freitas Guimarães, suggests domestic workers seek assistance from the union and larger, traditional trade unions such as CONTRACS rather than engage a legal professional straight away.<sup>168</sup> A domestic worker confirmed during an interview that the courts directed her to the union.<sup>169</sup>

Whereas the union in São Paulo is a central resource for all domestic workers, organizations in New York are fractured along national and ethnic lines. According Irene Jor from the National Domestic Workers' Union, they have 6-7 affiliates in New York representing Filipino, Nepali, and Latino domestic workers.

The fragmentation of domestic workers' organizations in New York is largely a function of the mostly migrant workforce: groups tailor their services to the needs and views of specific communities. For instance, Adhikaar, which represents Nepali workers, reported that their supporters had been happy with the Domestic Workers' Bill of Rights as it represented improvement and progress for them. Damayan's membership had been less satisfied since Filipino workers tend to be more educated and enjoy better conditions than the minimum guaranteed under the law.<sup>170</sup> Although organizations were previously affiliated under DWU, the organization that led the coalition that advocated for the Domestic Workers' Bill of Rights, the organization has since become less active. Harmony Goldberg, PhD, suggests that DWU was well positioned to manage the campaign for the law but too under-resourced to handle implementation. Instead, Goldberg explains that the smaller, more representative groups took over grassroots level coordination, education, mentorship, translation of materials and communication with their respective members.<sup>171</sup> The organizations also coordinate their own legal services, partnering with non-profits such as the Urban Justice

*“There has to be a constant drumbeat...there's always going to be new audiences who aren't aware [of the laws and their protections].”*

– Ai-jen Poo, Director of the National Domestic Workers Alliance

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<sup>165</sup> Naila Kabeer, Research Note: Women Workers and the Politics of Claims-Making in a Globalized Economy, United Nations Research Institute for Social Development, Geneva.

<sup>166</sup> Interview with Maria Lima, President, Domestic Workers' Union in São Paulo.

<sup>167</sup> Interviews with domestic workers from focus group in São Paulo.

<sup>168</sup> Interview with Ricardo Pereira de Freitas Guimarães, Lawyer, Freitas Guimarães Advogados Associados in São Paulo.

<sup>169</sup> Interview with Fátima, domestic worker in São Paulo.

<sup>170</sup> Interview with Luna Ranjit, Executive Director and Narbada Chhetri, Director of Organizing & Advocacy, Adhikaar in New York City.

<sup>171</sup> Interview with Harmony Goldberg, PhD, expert in São Paulo.

Center, the Asian American Legal Defense and Education Fund (AALDEF), and the New York Legal Assistance Group (NYLAG) as well as individual firms that do pro bono work.

Ai-jen Poo, the Director of the National Domestic Workers Alliance and former Director of DWU, believes:

“Enforcement in this industry has to be organizing and grassroots based and driven. There has to be a constant drumbeat to that, where because of high rates of turnover and mobility of the workforce, and new employers coming into the fold all the time, that there's always going to be new audiences who aren't aware.”<sup>172</sup>

Organizations representing domestic workers of common national or ethnic origin seem to be best situated to perform that work. However, it is possible that the organizations may end up working against each other if their interests are not aligned.

The lack of collective bargaining rights in both cities means that organizations play a crucial role in settling disputes.

## Workplace Culture

The workplace culture that domestic workers and their employers experience is pervasively informal in both New York City and São Paulo. In São Paulo, employers, domestic workers, and lawyers and discussed the difficulty in calculating overtime, the primary issue addressed by the law. Employers Renata and Carla both employed domestic workers on a daily basis and paid the same rate for vastly different duties.<sup>173</sup> Paying on a monthly as opposed to hourly basis may be a legacy of the traditional live-in domestic worker arrangement in which a salary is paid based on presence as opposed to real work delivered. When asked, Renata did not know how her domestic worker spent the eight hours for which she was paid.<sup>174</sup> If her domestic worker requested overtime pay, it would then be difficult for Renata to assess the work completed within the eight hours and what work remained. Similarly, the requirements of a household, such as the preparation of three meals per day for a family, cannot be completed by one domestic worker within an eight hour working day if she is expected to prepare breakfast before her employers go to work<sup>175</sup> and clear up after the evening meal, as was the case for a domestic worker who participated in the focus group discussion in São Paulo. Although the use of timesheets has gained traction and proven helpful in both New York and São Paulo, the practice remains under-utilized. The founder of Lalabee, a startup company offering online services for employers in São Paulo, reports lower than average growth amongst employer adoption of his tool.<sup>176</sup> Similarly, a survey conducted by Park Slope Parents reveals that only 23% of employers

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<sup>172</sup> Interview with Ai-jen Poo, Founder and Director of the National Domestic Workers' Alliance in New York City.

<sup>173</sup> Interviews with Renata and Carla, employer in São Paulo.

Renata also employs a nanny who works four days of the week.

<sup>174</sup> Interview with Renata, employer in São Paulo.

<sup>175</sup> Assuming an 8am or 9am start time.

<sup>176</sup> Interview with Marcos Machuca, Chief Executive Officer, Lalabee in São Paulo.

maintain written records of hours worked and only 4% of all employers have their domestic worker sign a time sheet.<sup>177</sup>

Renata welcomed the new law because she felt the domestic workers in her employment treated their work more formally and seriously as a result.<sup>178</sup> Previously, she had experienced domestic workers neglecting to attend work without notice or warning, which demonstrates that the historical informality has negative impacts on both parties. This is a sign of willingness among employers in São Paulo to reframe domestic work as real work and a source of decent work. The same trend was visible in New York during the campaign for the Domestic Workers' Bill of Rights. Following the *Shalom Bayit* (Peace in the Home) campaign, JFREJ's employer spokespeople advocated for the Bill. They spoke publicly about respecting the important work done by the domestic workers in their homes and acknowledged that raising standards of worker protection would benefit families as well.<sup>179</sup>

*“The intimate relationship between domestic workers and their employers is built on trust. When trust ends, the grief and anger between them makes it very difficult for both to come to an agreement. In this sense, it is very similar to a divorce.”*  
– Judge Ivete Ribeiro, Labor Court, São Paulo

However, the traditional informality of domestic work was pervasive and persists. Many employers of domestic workers do not consider themselves to be employers in the traditional sense.<sup>180</sup> The idea that a domestic worker is “one of the family” was prominent within all interviews. A Caribbean domestic worker in New York even refers to herself as a “grand-nanny,” because her service to her employer’s family has lasted for two generations of children; she served as nanny to her employer and now nannies for the employer’s daughter.<sup>181</sup> The wall between the public and private sphere is maintained, state enforcement inspections are rare, for example, but a domestic worker enters the private space occupied by the family and carries out work which is hard to quantify and value. This dynamic creates tension. As the work is often unsupervised, employers, officials, and lawyers in São Paulo emphasize that trust between an employer and domestic worker must exist for an employment situation to succeed.

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<sup>177</sup> Park Slope Parents, “The Park Slope Parents’ Nanny Compensation Survey: Results,” (New York: Park Slope Parents, 2013), 11, [http://cdn.parkslopeparents.com/images/2013\\_Nanny\\_Survey\\_Final1.pdf](http://cdn.parkslopeparents.com/images/2013_Nanny_Survey_Final1.pdf).

<sup>178</sup> Interview with Renata, employer, in São Paulo.

<sup>179</sup> Interview with Rachel McCullough, Organizer, Jews For Racial and Economic Justice, in New York City.

<sup>180</sup> Manuela Tomei, “Decent Work for Domestic Workers: An Achievable Goal or Wishful Thinking?”, Sangheon Lee and Deirdre McCann (Eds), *Regulating for Decent Work: New Directions in Labour Market Regulation* (Geneva: ILO and Palgrave Macmillan, 2011).

François Crépeau, “Labour exploitation of migrants.” Report to the Human Rights Council (A/HRC/26/35), 2014.

<sup>181</sup> Interviews with domestic workers from focus group in New York City.

However, Renata described that her mother had discovered a domestic worker was stealing from her but her mother was reluctant to confront the worker as the worker probably needed the money for her family but was fearful of asking for a loan or advance.<sup>182</sup> This contradictory example demonstrates the concern families have in relation to hiring new domestic workers to be unsupervised within their homes and that they may prefer to retain a domestic worker with whom the challenges are known and perceived to be manageable.

Traditionally, the relationship of employer and domestic worker has been characterized as one of dominance and submission. In São Paulo, a domestic worker reported that she had been let go from a job when her employer compelled her to share a bed with the family dog, even after the dog had excreted in the bed. She accepted the conditions because she needed the job, but was eventually fired for having a lack of affinity with the dog.<sup>183</sup> In New York City, the representatives from Adhikaar discussed instances of employers expecting domestic workers to sleep in a room with their children in order to care from them through the night.<sup>184</sup>

In New York City, the prevalence of undocumented migrants amongst domestic workers means that the employer has significant influence over the domestic worker's ability to remain in the country. On average, the immigration status of domestic workers is more precarious in New York and therefore, their reliance on their employers and the potential for abuse is far greater.<sup>185</sup>

In general, undocumented domestic workers hesitate to complete a contract of employment for fear of endangering their status. A contract helps ensure employment protections from which they would benefit and for which they qualify even in the absence of immigration documentation, such as overtime pay and severance terms. The environment of fear that surrounds undocumented migrant domestic workers prevents them from seeking to learn and advocate for their rights. To be without a contract puts them at further risk of abuse without recourse. It seems in this context the largely Brazilian nationals that undertake domestic work in São Paulo are in a stronger position to advocate for their rights; however, as the number of migrant domestic workers grows in cities, like São Paulo, domestic worker groups will need to begin to understand how protections extend to migrant workers.

The contexts for labor rights are very different in Brazil and New York State. The United States is a difficult environment for trade unions to achieve traction due to the strict laws that govern them, low levels of union density, and the fact that most domestic workers are expressly excluded from federal employment protections. In Brazil the Workers' Party has enjoyed a long period in power and has been able to domesticate several international treaties, such as ILO Convention 189, in order to insulate protections from future opposition governments. The political environment is much less supportive in New York State, as the state governor has no federal mandate to abide by and prioritizes laws based on individual platforms. Furthermore, as the first state in the United States to pass such protections for domestic workers, advocates in

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<sup>182</sup> Interview with Renata, employer in São Paulo.

<sup>183</sup> Interview with Rosário, domestic worker in São Paulo.

<sup>184</sup> Interview with Luna Ranjit, Executive Director and Narbada Chhetri, Director of Organizing & Advocacy, Adhikaar in New York City.

<sup>185</sup> Manuela Tomei, "Decent Work for Domestic Workers: An Achievable Goal or Wishful Thinking?", Sangheon Lee and Deirdre McCann (Eds), *Regulating for Decent Work: New Directions in Labour Market Regulation* (Geneva: ILO and Palgrave Macmillan, 2011).

New York had few precedents to consider as they attempted to regulate and formalize a highly informal work culture.

## VI. Conclusions and Recommendations

### Conclusions

Laws that protect domestic workers' rights constitute significant achievements for domestic workers worldwide, who seek recognition for their work and formal labor protections. In 2013, Brazil joined the growing community of countries that have passed domestic worker protection laws since the signing of the ILO Convention 189.<sup>186</sup> As the first state in the United States to pass such a law, New York began leading the movement to formalize and recognize domestic work even before the ILO Convention was adopted, and New York's example has set precedents to encourage other states to follow suit. Although most of the protections in the New York Bill of Rights were technically extended to domestic workers through other state and federal laws, the passage of the bill was a significant symbolic achievement that forced the government to think critically about the domestic work force and recognize their work as legitimate work worthy of explicit labor protections.<sup>187</sup>

Furthermore, in both New York City and São Paulo, domestic workers' sense of empowerment increased. The diverse movements that organized for formal protections not only succeeded with the passage of the laws, but they also started the process of transforming an isolated and informal workforce into an empowered network of workers who are beginning to bravely assert their rights. The passage of these two laws was a crucial step along the long path to formalization of domestic work and recognition of care work as real work and real economic activity. An examination of these laws reveals several opportunities to improve policy implementation and lessons to guide the other governments on the design and implementation of similar legislation.

### *Effective Awareness Raising Requires Clear Messaging and Targeted Outreach*

The government of Brazil invested significantly more resources to raise awareness amongst all employers and domestic workers of the constitutional amendment. The announcement of the law through news, radio, and public banners reached their intended targets, as many employers and domestic workers report learning about the law on the news or radio.<sup>188</sup> However, the announcements also generated confusion among employers about their new obligations, and several domestic workers did not seek out resources on the law until after they had suffered abuse or termination.<sup>189</sup> Likewise in New York, the worker organizations anticipated that the

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<sup>186</sup> The following countries have passed domestic worker protection laws: Argentina, Bahrain, Brazil, India, Italy, Nicaragua, the Philippines, Spain, Singapore, Thailand, and Venezuela. UN Women. "Domestic Workers in the Southern Cone Push for Rights with ILO Convention on Their Side," 13 June 2013, accessed 25 Apr. 2015, <<http://www.unwomen.org/en/news/stories/2013/6/domestic-workers-in-the-southern-cone-push-for-rights-with-ilo-convention-on-their-side>>.

<sup>187</sup> Harmony Goldberg, *Our Day Has Finally Come: Domestic Worker Organizing in New York City*. Dissertation and Thesis. CUNY Graduate Center, 2014. <<http://works.gc.cuny.edu/etd/422>>, 208.

<sup>188</sup> Interviews with employers and domestic workers from focus group in São Paulo.

<sup>189</sup> Focus group with domestic workers in São Paulo.

Department of Labor would place advertisements on buses and subways to educate domestic workers and employers about the law. However, no such ads were placed. Rather, the NYS DOL published poorly articulated and translated fact sheets that worker organizations and NGOs ultimately corrected and distributed to domestic workers.<sup>190</sup>

Awareness raising campaigns can potentially achieve more than the minimum standards of the law when effectively executed amongst workers *and* employers. Greater public awareness will encourage domestic workers to access the resources available to them and will remind employers to understand their new obligations under the law. The organizing of and outreach to employers by Jews for Racial and Economic Justice and Park Slope Parents in New York City are examples of how employers came together to help each other understand the implications of the law and how to formalize employer-domestic worker relationships.<sup>191</sup> Advocates and employers agree that compliance with the law and work settings that exceed minimum standards, such as a living wage, leads to stronger families and healthier communities.<sup>192</sup>

### *Formal Complaint-Driven Enforcement Mechanisms Cannot Accommodate Informal Workforces*

The formal enforcement mechanisms in New York and São Paulo rely on complaint-driven procedures; these inherently passive procedures require domestic workers to come forth and file a complaint in order to assert their rights. Although many low-wage workers often hesitate to file a complaint due to fears of retribution, the system is especially problematic for domestic workers, who are isolated, work in the private spaces of their employers, and cannot file complaints anonymously or as part of a larger group. Additionally, as most domestic workers in New York City and a small, but growing number of workers in São Paulo are migrants, concerns about documentation status prevent workers from approaching official agencies.

Furthermore, our interviews with worker organizations and government officials in New York and São Paulo revealed that the labor agencies received no additional staff, training, financial, or other resources to help staff better address complaints from domestic workers, a particularly vulnerable workforce. Not only do the labor agencies mandated to execute new policies require the resources to implement and enforce laws, but they also require the power to enforce stronger penalties and more attractive incentives to encourage compliance with the laws.

When formal mechanisms, such as the labor agencies in New York state and São Paulo, fail to enforce the laws, domestic workers, employers, and worker organizations have turned to the court system to voice their grievances and seek reparations. Although interviewed experts assert that the courts can provide timely and efficient resolutions to disputes between employers and domestic workers, the option remains costly and risky for domestic workers. In São Paulo, domestic workers often do not possess enough evidence of abuse or a rights violation, and judges are required to dismiss cases.<sup>193</sup> In New York City, lawyers report the state

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<sup>190</sup> Interview with Narbada Chhetri, Director of Organizing and Advocacy and Luna Ranjit, Executive Director, Adhikaar in Queens, New York.

<sup>191</sup> Park Slope Parents. "Inside PSP's Guide to Hiring a Nanny," 25 Apr. 2015. <<http://www.parkslopeparents.com/Nanny-101/nanny101intro.html>>.

<sup>192</sup> Interview with Rachel McCullough, Organizer, Jews For Racial and Economic Justice in New York City and phone interview with Ai-jen Poo.

<sup>193</sup> Interview with labor lawyers in São Paulo.

law and court system to be convoluted and unwieldy, and often encourage their domestic worker clients to pursue their rights in the federal courts, which do not enforce as many protections as the state law.<sup>194</sup>

### ***Worker Organizations Require Funding and Capacity Building to Enforce Laws at Grassroots Level***

Representatives of domestic workers' organizations in New York City explained that they knew they would have to be the "grassroots enforcement arm" of the law because they were more acquainted with the needs of domestic workers and because the government would not allocate the resources or political will to enforce the law effectively.<sup>195</sup> Similarly, in São Paulo, a domestic worker who sought legal advice from the judiciary was redirected to the union as a more reliable remedy. Unions and community-based organizations propel the laws forward towards increased formalization and recognition of work, and the domestic workers who often lead these organizations have begun to mobilize domestic workers to assert their rights. However, these organizations have neither sufficient financial resources nor the capacity to reach the large labor force to educate them about their rights and assist them with filing claims. Furthermore, organizing domestic workers remains a challenge, as these workers remain isolated in the homes of their employers, work long hours, have little time to devote to additional work, and some fear retribution from their employers for being involved in organizing activities.

### ***Exemptions for Part-time Domestic Workers Cause Workforce Insecurity***

The case of Brazil highlights the dramatic effect loopholes have on the economy. Since the amendment protected domestic workers who worked for three or more days, we learned that employers felt compelled to fire their "weekly" or "monthly" workers because of the additional expense of social security and severance payments. Many of these domestic workers then became "daily" workers, and began working for multiple employers throughout the week. Sylvia, a director at the union in São Paulo explained that domestic workers now think positions as day laborers are more lucrative than their positions as monthly workers. This feeling of financial security is unfounded as these day laborers do not receive the social security and severance payments that guarantee long-term financial security.<sup>196</sup> Similarly, domestic workers in New York noted a comparable trend of employers hiring multiple part-time workers to avoid paying overtime wages required under the new law.<sup>197</sup> While the original motivation to limit the safeguards to full-time domestic employees may have been to not overburden recipients of occasional domestic services, it becomes clear that this arrangements creates incentives to undermine the legal obligations. It also leads to working conditions that fall below the standards before the law came into place. For this reason, it is paramount to replace such incentives with incentives and penalties that work toward an effective enforcement of the law.

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<sup>194</sup> Interviews with Haeyoung Yoon, Deputy Program Director, National Employment Law Project and Nicole Hallett, Former Lawyer, Urban Justice Center in New York City.

<sup>195</sup> Harmony Goldberg, *Our Day Has Finally Come: Domestic Worker Organizing in New York City*. Dissertation and Thesis. CUNY Graduate Center, 2014. < <http://works.gc.cuny.edu/etd/422>>, 33; and phone interview with Priscilla Gonzalez, former Executive Director, Domestic Workers United.

<sup>196</sup> CONTRACS domestic worker focus group in São Paulo.

<sup>197</sup> Caribbean domestic worker focus group in New York City.

### ***Enforcement Requires Greater Participation from City Government***

Regardless of the level of the law (e.g., state or federal), city governments can and should be more active in the implementation of these laws. The largest concentrations and populations of domestic workers live and work in cities. For this reason, city governments have the closest proximity to the industry and can better serve as advocates for these workers. The cases of São Paulo and New York illustrate that city governments should have the legal authority to implement these laws and are often under-utilized as valuable resources for oversight and enforcement. For example, the municipal offices for human rights and women's policies in São Paulo are better acquainted with the unique needs of domestic workers, have powerful authority to advise the mayor's office, and can provide an additional layer of oversight to ensure domestic workers' rights are protected.<sup>198</sup> In New York City, NGOs and advocates for domestic workers, having found little support with state government, have now turned to advocate for expanded rights by the city government, such as paid sick leave.<sup>199</sup> New York City is also considered a "sanctuary city" where the local government has reduced the collusion with federal immigration authorities and provided municipal identification cards for undocumented residents.<sup>200</sup> Although the New York State Domestic Worker Bill of Rights grants protections to undocumented workers, fear of deportation still prevents many workers from filing claims. This is where city government can play a role through explicit assurances that they will safeguard migrant domestic workers, regardless of their immigration status. The growing numbers of municipal advocacy campaigns suggest that cities are an increasingly popular location for more progressive laws and protections.

### **Recommendations**

The cases of New York City and São Paulo reveal several valuable lessons to both improve policy implementation at the local level in these cities and to build stronger and more effective domestic worker laws in other cities across the world. The following recommendations apply to all stakeholder groups that design, implement, and benefit from laws that seek to formalize domestic work, including government agencies, court systems, NGOs and worker organizations, domestic workers, and employers. This sections will elaborate on four key recommendations, namely: 1) include stronger protections and greater coverage in laws; 2) expand and strengthen capacity to raise awareness and enforce laws; 3) craft incentives and penalties that align interests of employers and domestic workers; and 4) pursue and support the development of partnerships and tools to formalize the domestic work industry.

#### ***1. Include Stronger Protections and Greater Coverage in Laws***

The laws intended to protect domestic workers' rights and create a formal work industry require a strong foundation of comprehensive rights and protections because the alternative mechanisms to secure rights available to other workers are not accessible for domestic workers.

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<sup>198</sup> Interview with Rogerio Sottili, Human Rights Commissioner in São Paulo and Interview with Denise Dau, Secretary of Women's Policies in São Paulo.

<sup>199</sup> Interview with Irene Jor, New York Organizer, National Domestic Workers Alliance.

<sup>200</sup> Matt Flegenheimer, "New York City to Formally Start Its Municipal ID Card Program." *The New York Times*, 11 Jan. 2015. Web. 06 May 2015. <<http://www.nytimes.com/2015/01/12/nyregion/new-york-city-to-formally-start-its-municipal-id-card-program.html>>.

As we have seen in New York City and São Paulo, domestic workers do not have collective bargaining rights, a mechanism that other workers use to negotiate labor standards. As Claire Hobden theorizes, collective bargaining may not even be an appropriate vehicle for domestic workers to garner stronger employment rights, as the structure of the workforce does not conform to traditional worker-employer bargaining units.<sup>201</sup>

Therefore, in the absence of a similar institution to strengthen and improve labor standards, domestic workers require specific laws that comprehensively address the rights and protections they deserve. The cases of New York City and São Paulo illustrate the damage done by the weakening of these laws. For example, the original draft proposal for the Domestic Workers' Bill of Rights in New York included provisions for health insurance, notice of termination, living wage, paid sick leave, and severance pay.<sup>202</sup> Priscilla Gonzalez, a former organizer with DWU explained that the exclusion of these rights from the final bill upset domestic workers who learned of the movement late, and these domestic workers hesitated to join a movement they felt did not adequately address their concerns.<sup>203</sup>

In São Paulo, the loophole has some concerned about unemployment in the aftermath of the law. It also may cause the underemployment of domestic workers who now work as day laborers and do not receive the same constitutional protections. Furthermore, these unintended macroeconomic consequences have thrown the law back into dispute, as the Senate only recently passed a law to address the appropriate level of social security and severance employers, and the proposal awaits presidential approval.<sup>204</sup> The debate to find an optimal balance of protections for domestic workers and fulfillment of the care deficit continues. These weaknesses and lack of clarity in the law undermine and delay effective implementation of the laws. Therefore, advocates and politicians should ensure that legal protections include more than the minimum and address the prevailing concerns domestic workers face. In particular, laws must include requirements for a minimum or living wage, hours worked, overtime, paid sick leave or vacation, notice of termination, severance pay, and assistance with acquiring health insurance. Additionally, the definition of domestic worker in these laws must anticipate and preclude incentives that in the end backfire and lead to the exclusion of workers from their legal rights, and encourage employers and domestic workers to raise the standard, rather than avoid it.

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<sup>201</sup> Claire Hobden, "Winning Fair Labour Standards for Domestic Workers: Lessons Learned from the Campaign for a Domestic Workers' Bill of Rights in New York State," (Geneva: ILO, 2010), 29.

<sup>202</sup> Interview with Irene Jor, New York Organizer, National Domestic Workers Alliance.

<sup>203</sup> Interview with Priscilla Gonzalez, former Executive Director, Domestic Workers United.

<sup>204</sup> Gabriela Guerreiro and Flávia Foreque, "Empregado doméstico passa a ter direito au FGTS," *Folha de S.Paulo*, 6 May 2015, < <http://www1.folha.uol.com.br/mercado/2015/05/1625741-senado-regulamenta-direito-do-trabalhador-domestico.shtml>>; Interview with Mario Avelino, CEO, Instituto Doméstica Legal in Rio de Janeiro.

## 2. Expand and Strengthen Capacity to Raise Awareness and Enforce Laws

The extensive awareness raising campaigns of São Paulo teach us that the investment of resources in public awareness campaigns can elevate the entire population's knowledge about the law. Therefore, laws need to include funding for the implementation of outreach and educational campaigns. Furthermore, government agencies must recognize that outreach to employers and domestic workers may be more effective if executed by those organizations that already work closely with these constituencies. Just as domestic worker and employer groups participated in the design of the law, government agencies should recognize these groups' capacity to raise awareness about the laws and offer them the opportunity to participate in the implementation. Funding designations should account for the needs of both government agencies and NGOs that lead and participate in awareness raising campaigns.

*“We know that enforcement has to be very grassroots, we should tap into the grassroots infrastructure in order to do that. We shouldn't be reinventing the wheel.”*

– Ai-jen Poo, Executive Director, National Domestic Workers Alliance

Despite our criticisms of the complaint-driven processes that predominates policy enforcement structures, we understand it may be infeasible to discard a deeply entrenched system. Therefore, we recommend that laws not only articulate appropriate incentive and penalty structures, but that they also articulate specific resources and authorizations so that the institutions entrusted with enforcing the law have the capacity to do so. Training and funding for government officials who must now understand and process domestic worker complaints must be provided. Furthermore, the laws should designate resources and relevant authority to allow NGOs and city-level government agencies to help enforce the law. This is an effective strategy as these institutions are in closest proximity to large amounts of domestic workers and city agencies often have the power to help implement labor standards that exceed state or federal minimums.

The examples below illustrate a few recent best practices to strengthen the implementation of laws.

### Examples of Recent Best Practices to Strengthen the Implementation of Laws

#### ***Proposal to Include Implementation Resources for NGOs in Connecticut***

In March 2015, the Domestic Workers' Bill of Rights was introduced in the Connecticut state legislature. There are over 40,000 domestic workers in Connecticut and, similar to New York City, these workers are primarily migrant women.<sup>205</sup> The Connecticut Bill of Rights campaign was

<sup>205</sup> National Domestic Workers Alliance. "Connecticut Bill of Rights," 25 Apr. 2015. <<http://www.domesticworkers.org/connecticut-bill-of-rights>>

inspired by the successes and lessons from New York and other states that have recently passed domestic workers rights law in the U.S. Based on these lessons, particularly related to strengthening implementation and enforcement mechanisms, domestic workers' organizations and legal advocates have pushed for explicitly dedicated resources for NGOs to assist with awareness raising and helping workers and employers comply with the law.<sup>206</sup>

### ***Municipal Funding for NGO Partners in San Francisco***

Advocates and government officials in San Francisco have partnered at the city-level to create more expansive enforcement arms for city and state labor laws, such as minimum wage and sick days. This includes specific funding for local NGOs that organize workers, including domestic workers, to organize and educate domestic workers so they are aware of their rights.<sup>207</sup> Local organizations, such as Mujeres Unidas y Activas, have a number of methods to connect with domestic workers in the Bay Area, including a labor rights hotline, job training and placement programs, and leadership development and organizing initiatives to build a great sense of collective empowerment amongst workers.<sup>208</sup>

### ***3. Craft Incentives and Penalties that Align Interests of Employers and Domestic Workers***

Although both laws in New York and Brazil include penalties against employers for non-compliance with the law, our research indicates that the labor agencies may rarely impose these penalties as they receive few complaints to adjudicate.<sup>209</sup> While some employers who are more knowledgeable about the law fear potential tax audits and penalties for non-compliance, other employers are either unaware of or undeterred by potential penalties. More often, domestic workers fear retribution from employers and do not file complaints. These two laws demonstrate how penalty structures often fail to achieve the desired result of compliance with the law and greater workforce formalization. We recommend a deeper consideration of employers' and domestic workers' interests to improve penalty structures and to create compelling incentives.

Our interviews and research reveal that employers seek high quality and consistent work from domestic workers they can trust and rely upon; although employers hope to pay as little as possible for these core services, they value high quality work from their domestic workers and recognize that fair treatment for their domestic workers will create a more peaceful and healthy atmosphere in their homes. Domestic workers primarily seek stable employment and financial security, and have been willing to suffer abuse to keep a job. However, domestic workers increasingly seek greater respect, compensation, and rights for their hard work and they desire a

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<sup>206</sup> Ibid, and phone interview with Nicole Hallett, Former Lawyer, Urban Justice Center.

<sup>207</sup> Interview with Ai-jen Poo, Director, National Domestic Workers Alliance.

<sup>208</sup> Mujeres Unidas Y Activas. "Domestic Worker Rights." 25 Apr. 2015.

<<http://mujeresunidas.net/campaigns/domestic-worker-rights/>>.

<sup>209</sup> Interview with Haeyoung Yoon, Deputy Program Director, National Employment Law Project. The New York Department of Labor does not impose penalties for violations of the law. However, it does impose retroactive penalties for employers who are found guilty of discrimination under New York State Human Rights Law. The Department of Labor also imposes penalties against employers that retaliate against a worker that files a complaint.

more formal arrangement with employers to protect themselves against abuse and/or unexpected termination.

Tax incentives and vouchers, such as those outlined below, have been used across the world to better align these interests and to improve compliance with the laws. We also propose a new tax credit as an example of a city-level tax incentive.

## Examples of Tax Incentives and Vouchers to Encourage Compliance with the Law

### ***Compulsory Taxes and Tax Incentives in Argentina***

In 2003, Argentina began a series of reforms to address the growing population of informal workers, including domestic workers. The government's initial attempt to formalize this workforce was to ensure tax registration and social security coverage through the simplified single-tax system known as *Monotributo*. This social security program is based on the assumption that every household at certain income levels employ one domestic worker. Unless proven otherwise, these households have a standard amount of income tax withheld for the general social security fund (the Special Social Security Regime for Domestic Servants) that a domestic worker is eligible to receive if they work more than six hours per week.<sup>210</sup>

In 2005, Argentina passed National Law 26.063, which provides tax incentives for employers to register their domestic workers. This policy allows households that pay income tax to deduct a portion of the cost of their domestic worker's salary and social contributions. In the first three years during the implementation of this law, the level of domestic worker registration increased from 5% to 15% and nearly 240,000 employers claimed domestic worker deductions.<sup>211</sup>

In 2013, Argentina passed the Special Scheme for Employment Contracts of Private Household Workers, a federal law that extends labor rights to domestic workers, a category of workers who were previously excluded.<sup>212</sup> The extension of labor protections and the incentives for employers and workers to register are promising steps towards formalization. Yet, as the ILO recommends, the government must commit to increased "monitoring and awareness-raising efforts" so more workers and employers are aware of the incentives, rights, and obligations.<sup>213</sup>

### ***Vouchers in Belgium***

In 2004, Belgium created *Titres services*, a federal voucher program to create jobs and reduce informal household work arrangements.<sup>214</sup> The Belgium government contracted with Sodexo, a private company, to manage the administration of the vouchers. Sodexo works as an intermediary between firms, households, and domestic workers, all of whom must be registered with the company. Households registered with Sodexo can purchase a service voucher, which

<sup>210</sup> "Employment Formalization in Argentina: Recent Developments and the Road Ahead," International Labor Organization, (2014): 8.

<sup>211</sup> "Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Sixth Periodic Report of States Parties – Argentina," Committee on the Elimination of Discrimination against Women, (2008): 8.

<sup>212</sup> "Employment Formalization in Argentina: Recent Developments and the Road Ahead," International Labor Organization, (2014): 5-6.

<sup>213</sup> *Ibid*, 6.

<sup>214</sup> "Developing Personal and Household Services in the EU - A Focus on Housework Activities," European Commission - Employment, Social Affairs, and Inclusion, (2013): 35.

can be used to compensate a domestic worker for her services. The household must contact a licensed firm, which connects them with a “service voucher worker.” Once a worker has completed her work, the household provides her with signed and dated vouchers based on the number of hours worked. The worker then submits these vouchers at the firm and is paid for her work. The firm consolidates all of the service vouchers it receives from its workers and submits them to Sodexo, who reimburses them. The government subsidizes this system by sharing part of the cost of the vouchers with the household (to make them more affordable) and by allowing the household to deduct the cost of vouchers from annual income taxes.

The voucher system in Belgium has been considered a success because it has a high utilization rate amongst households and because it has created more formal jobs with better labor standards for domestic workers. In the Belgium system, the employer of the domestic worker is the service voucher firm and not the household for whom the domestic worker provides services. This structure ensures a formal labor contract, which guarantees the same rights as any other worker.<sup>215</sup> Another interesting element of the voucher system is its potential to create more traditional worker-employer collective bargaining units that have been difficult to establish.<sup>216</sup>

#### ***Proposed Tax Credit in New York City***

A city tax credit for employers will incentivize compliance with the minimum wage and overtime stipulation of the law. Additionally, it will also give the NYC Department of Tax and Finance an employment record of domestic workers. The agency should be directed to share this data with NYS DOL, which can compile a database of employers. DOL can then generate a letter outlining the DWBR to send to these employers warning them of the penalties for non-compliance. It can also include recommended best practices prepared by the worker orgs. NYC Tax and Finance also has an auditing process to make sure people aren’t wrongly claiming a tax credit, which might be an opportunity for DOL to piggyback on the process. The NYC Council Speaker is currently pressing to establish a city level DOL, which would really be the ideal partner to coordinate along with MOIA and Tax and Finance).

For cities with large migrant worker populations, such as New York City, formalization mechanisms such as contracts or “paying on the books” are barriers for undocumented workers. While the New York Bill of Rights explicitly applies to undocumented workers, these workers still prefer informal employment arrangements due to fear of deportation. This barrier must be considered when crafting incentives and penalties so these workers are not further excluded from new mechanisms that advance formalization and increased protections.

#### ***4. Pursue and Support the Development of Partnerships and Tools to Formalize the Domestic Work Industry***

Our examination of the core interests of employers and domestic workers reveals that they both desire more formal mechanisms to articulate their working relationship and fall back on if either party fails to achieve their obligations. Therefore, the market demands reliable and easy-to-use

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<sup>215</sup> “Formalizing Domestic Work through the Use of Service Vouchers The Particular Cases of France, Belgium and the Canton of Geneva,” International Labor Organization, (2013): 11-12.

<sup>216</sup> Ibid, 7-8.

tools to help employers and domestic workers create a more professional working environment. They require tools to help write contracts, determine and verify hours worked, evaluate real work, and improve working relationships. These tools must also strike the balance between the professional employer-worker relationships one typically sees in the office with the familial types of relationships that employers and domestic workers develop in the home. Stakeholder groups should support the research, development, and dissemination of such tools to standardize these working relationships and reimagine the lived reality in a more formal way.

We learned of the following tools and partnerships in our investigation, which are promising examples that can facilitate workforce formalization.

### **Examples of Tools and Partnerships to Formalize Domestic Work Industry**

#### ***PreviRed System in Chile***

PreviRed is an online platform that micro and small enterprises can utilize to make electronic payments to employees, including employers of domestic workers. The platform serves as a third party agency to assist with the appropriate salary deductions (e.g. social security, severance, health care, etc.) in collaboration with the government agencies in which the domestic worker is registered. PreviRed is a good example of a platform that can simplify what are often complex administrative systems for employers to register, compensate, and provide appropriate contributions required by law. Currently, PreviRed is being used by 450,000 micro and small enterprises in Chile.<sup>1</sup>

The overall goal of a system like PreviRed is to reduce the administrative challenges related to formalization and compliance with labor laws. However, as the ILO points out, policies to promote business registration alone “do not necessarily generate the desired results in terms of formal employment and compliance with labor regulation.”<sup>1</sup> Therefore, in addition to platforms like PreviRed, policies that provide incentives for employers to register and fairly compensate employees and far-reaching public awareness strategies must be implemented.

#### ***eSocial Portal in Brazil***

Similar to the PreviRed System in Chile, the eSocial Portal in Brazil is an online platform that currently allows employers to register information about their domestic workers, such as the worker’s labor card, wages, and the admission date.<sup>1</sup> The Brazilian government expects that the Portal will include more services for large, small, and micro enterprises by 2017, including a simplified module for employers of domestic workers that will combine the appropriate salary reductions and payments to the government in one place. The simplified module will also provide employers with the documents required by law (i.e., work contract, receipt for salary and transportation allowance, timesheet, and termination notice) and a tool to calculate overtime, salary deductions, and payment of vacation benefits, among other obligations.<sup>1</sup>

The Brazilian government expects that the eSocial portal will reduce the bureaucratic challenges that employers often encounter to formalize and pay their workers. The portal also seeks to give federal government agencies access to information about employers and employees that is not currently available in one single platform. For example, the Ministry of Labor and the Brazilian Internal Revenue Service will be able to easily crosscheck information about a domestic worker’s salary, which may contribute to higher compliance with the law and higher tax revenues.

### ***Lalabee's online management tools for employers in Brazil***

Lalabee is a private company offering online services for employers of domestic workers. Marcos Machuca, who we interviewed, explained that he founded Lalabee after the passing of the 2013 constitutional amendment. Its purpose is to help employers manage all aspects of employing a domestic worker, including tracking work hours and overtime control, vacation leave, and salary discounts.<sup>1</sup> What sets Lalabee apart from other private businesses in the domestic work market is the tool Marcos Machuca developed to calculate wages, deductions, and overtime. He consulted with labor lawyers and judges to ensure the tool reflects the complexities of the law.

Like the eSocial portal, Lalabee facilitates compliance with the administrative obligations of the law. But despite its active media presence in São Paulo during the past year, Lalabee is still largely unknown to most employers. It also charges a fee for its services, which is an extra cost employers may not want to add to the other expenses that have emerged as a result of the constitutional amendment. Alternatively, as we have suggested in our study, tax incentives for employers that register their domestic workers may be a more effective solution towards greater formalization.

### ***Care.com and National Domestic Workers Alliance Partnership in the United States***

The National Domestic Workers Alliance (NDWA) is a national organization with local affiliates in 26 cities and 18 states representing more than 10,000 domestic workers across the U.S.<sup>1</sup> NDWA recently formalized a partnership with Care.com, the world's large online marketplace for households to find care workers. Launched in 2007, Care.com has more than 14 million users worldwide with a large concentration in the U.S. The online marketplace provides families with tools and tips for hiring workers, including background checks, electronic payments, and tax preparation services.<sup>1</sup>

The NDWA partnership represents an exciting opportunity to use advances in technology to raise labor standards beyond the minimums outlined in various state laws and to further formalize domestic work. Palak Shah, the Social Innovations Director of NDWA, explained that the "objective of the partnership is to figure out how, through their company, we can promote better standards and job quality for workers and make the relationship more defined and equal." One potential aspect of the partnership includes integrating the "Fair Care Pledge" into the Care.com employer registration and domestic worker search process. NDWA developed this pledge in partnership with Hand in Hand, the national network of domestic worker employers, and includes recommendations for employers in the areas of fair pay, clear expectations, and paid time off.<sup>1</sup> The technical details of how the pledge may be integrated into the online marketplace are still in the development phase. Shah considers this partnership an exciting experiment "that is really worth investing in because of the sheer scale" of Care.com.

## VII. The Research Team

**Figure 10: Research Team and UN Women Representatives at SIPA Presentation, May 5, 2015<sup>217</sup>**



The SIPA Capstone Project brought together the following seven graduate students who are pursuing their Master's in Public Administration or International Affairs to conduct research and formulate recommendations on the implementation of these laws to protect domestic workers in New York City and São Paulo:

**Nalika Vasudevan** (Team Project Manager) is pursuing her Master's in Public Administration at Columbia University (MPA '15) with specializations in economic policy and public finance. She previously worked with the Women's Political Participation team at the National Democratic Institute and has conducted research and consulting for higher education administrators at the Advisory Board Company in Washington, D.C and Deloitte Consulting LLP in New York. Nalika's interests include public management and women's empowerment, and she possesses extensive experience in interview and focus group-based best practice research and project management. Nalika grew up in the Chicago area holds an A.B. in Political Science from the University of Chicago.

**Marcello Bonatto** has worked with education in post-conflict settings and low-income communities in Brazil, Colombia, Egypt, Bosnia, and Senegal. His work has focused primarily on conflict sensitive education, peacebuilding, and technology and innovation as means to build resilience among and empower vulnerable youth. He is also the co-founder and editor-in-chief of Brazil Talk, an online platform with original and thought-provoking content about contemporary Brazilian issues. Born in São Paulo, he holds a B.A. in Communication Studies from

<sup>217</sup> Pictured from left to right - top row: Helen Patrick, Nalika Vasudevan, Rickke Mananzala, Alexis Grenell, Marcello Bonatto, Daniel Naujoks (SIPA Faculty Advisor); bottom row: La-Toya Niles, Sarah Gammage (UN Women), Lanna Walsh, Inkeri von Hase (UN Women), Carla Kraft (UN Women).

Pontifícia Universidade Católica in Rio de Janeiro and a Diploma in Asian Studies from Kansai Gaidai University, Japan.

**Alexis Grenell** runs her own communications and strategy practice focusing on issue campaigns and non-governmental actors/organizations in New York and Washington, D.C. She got her start working as the Communications Director for New York State Senator Jeff Klein, where she was part of the campaign team that flipped the State Senate Democratic for the first time in 40 years. After working on several sleepless campaigns, she went back into government to serve as the Deputy Director of Intergovernmental Affairs for Attorney General Andrew Cuomo. Grenell writes a monthly column for City & State, and her work has been published in the Daily News, Newsday, the New York Post, and El Diario. She appears regularly on NY1's Inside City Hall with Errol Louis. Alexis is a graduate of the University of Chicago.

**Rickke Mananzala** has over 13 years of experience in non-profit advocacy work in New York City on issues related to racial, economic, and gender justice. He previously served as the Executive Director of FIERCE, an organization for LGBTQ youth of color, and as a New Voices Fellow at the Sylvia Rivera Law Project. Rickke is currently an independent non-profit consultant who partners with grassroots organizations and foundations, including several domestic worker organizations in New York City for whom he has provided advocacy strategy, policy analysis, and leadership development support. Rickke holds a B.A. in Political Science from Columbia University.

**La-Toya Niles** is pursuing her Master of Public Administration at SIPA where she is analyzing labor markets, employment practices, and human capital development to determine how to leverage relationships among public, private, and community-based organizations to assist marginalized groups attain employment and develop sustainable livelihood strategies. Prior to attending SIPA, she attained her Bachelors in Marketing Management from Baruch College Zicklin School of Business and upon graduation worked with the Human Resources Department of McGraw Hill Financial and then the Training and Upgrading Fund of 1199SEIU.

**Helen Patrick's** background is largely in fundraising for a large UK nonprofit. She spent four years initiating and developing the organization's corporate partnerships and, following a restructure, moved to a project, program and change management-focused position within the Event Logistics Team. Having spent the early years of her career with three market-leading firms in banking, executive search and business risk, she has found working in the nonprofit sector to be incredibly valuable and rewarding.

**Lanna Walsh** has over eight years of experience as an international development professional with large multi-lateral organizations and small NGOs. She has worked on issues related to communications, reproductive health, labor migration, and social entrepreneurship. She most recently worked in Thailand and Myanmar for the International Organization for Migration (IOM) and Pact, an implementing partner of the United States Agency for International Development (USAID). Her work with IOM focused on improving access to health and social services for migrants from Myanmar. For Pact she was a communications consultant providing technical assistance to develop communications plans, trainings, and create marketing materials for print and web. She has studied abroad in and traveled to over 20 countries.

## VIII. Annexes

### Annex 1: Stakeholders Interviewed

A number of organizations, government officials, and experts were contacted, consulted, and interviewed. Several became key collaborators in organizing focus groups and providing connections to other key persons or information. They include a diverse mix of NGOs at national and local levels, some of which are worker-led, to government agencies, unions, academics, judges, legal experts, and elected officials listed below.

#### New York State

##### *Public Authorities*

- **Mayor's Office of Immigrant Affairs (MOIA)** - A government agency of NYC that promotes the well-being of immigrant communities by recommending policies and programs that facilitate successful integration of immigrant New Yorkers into the civic, economic, and cultural life of the City.
- **NYC Councilman Brad Lander** – NYC Councilmember for Councilmanic District 39 in Brooklyn, which includes Park Slope. This neighborhood has a high concentration of domestic workers and is home to Park Slope Parents, an organization that includes a large number of domestic worker employers.
- **State Senator Diane Savino** – New York State Senator for Senate District 23. She was the lead Senate sponsor for the Domestic Worker Bill of Rights.
- **State Senator Liz Krueger** – New York State Senator for Senate District 28. She developed guide for her constituents on regulations associated with employing a domestic worker.

##### *NGOs*

- **Adhikaar** - A New York-based NGO working with Nepali-speaking communities to promote human rights and social justice. They facilitate access to information and resources on immigration, health, and workers' rights. They also organize the community to collectively advocate against injustice and abuse. Interviewees: Luna Ranjit (Executive Director) and Narbada Chhetri (Director of Organizing and Advocacy)
- **Community Development Project (Urban Justice Center)** - The CDP strengthens the impact of grassroots organizations in NYC's low-income and other excluded communities. They offer legal clinics, publish community-drive research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice. Interviewee: Nicole Hallett (Former Staff Attorney)
- **Damayan Migrant Workers Association** - A grassroots NGO based in New York and New Jersey made up of and for Filipino immigrant workers, mainly domestic workers. Led by Filipino domestic workers, they organize other workers to fight for fair labor standards, dignity and justice. Interviewee: Leah Obias (Community Organizer)
- **Domestic Workers United** - An organization of Caribbean, Latina, and African nannies, housekeepers, and elderly caregivers in NY, organizing for power, respect, fair labor

standards and to help build a movement to end exploitation and oppression for all.  
Interviewee: Priscilla Gonzalez (Former Executive Director)

- **Jews for Racial and Economic Justice (JFREJ)** - An NGO that organizes employers of domestic workers. They were a leader in bringing employer voices in support of the Domestic Worker Bill of Rights. Interviewee: Rachel McCullough (Community Organizer)
- **National Domestic Workers Alliance** - The nation's leading voice for dignity and fairness for the millions of domestic workers in the US, most of whom are women. NDWA works for the respect, recognition, and inclusion in labor protections for domestic workers. The national alliance is powered by 42 affiliate organizations including over 10,000 nannies, housekeepers, and caregivers for the elderly in 26 cities and 18 states. Interviewees: Ai-jen Poo (Director), Irene Jor (New York Organizer), Palak Shah (Social Innovations Director)
- **National Employment Law Project (NELP)** - An NGO that partners with national, state, and local allies to promote policies and programs that create good jobs, strengthen upward mobility, enforce hard-won worker rights, and help unemployed workers regain their economic footing through improved benefits and services. Interviewee: Haeyoung Yoon (Deputy Program Director)

#### *Scholars and Relevant Experts*

- **Harmony Goldberg, PhD.** – Academic expert on domestic workers' rights and new paradigms for worker organizing in the United States. She recently completed a dissertation (unpublished): "Our Day Has Finally Come: Domestic Worker Organizing in New York City".
- **Claire Hobden, International Labor Organization (ILO)** – Policy expert on domestic worker rights internationally and in New York. Former staff person with Domestic Workers United who played an integral role in the passage of the Domestic Worker Bill of Rights.

#### São Paulo

##### *Public Authorities*

- **Denise Motta Dau, Secretary of Women's Policies in the City of São Paulo (Secretária Municipal de Políticas para as Mulheres)** – Secretary Dau leads a public policy agenda at the municipal level to promote women's rights and empower women both politically and economically. Her office runs a training program for domestic workers to improve the quality of their services.
- **Judge Ivete Ribeiro, Regional Labor Court - São Paulo (Tribunal Regional do Trabalho de São Paulo)** - Judge Ribeiro has reviewed several decisions of trial-level courts related to domestic workers at appellate-level courts.
- **Judge Andrea Brody, Regional Labor Court - São Paulo (Tribunal Regional do Trabalho de São Paulo)** - Judge Brody has heard and decided on cases related to domestic workers at trial-level courts.
- **Labor Inspector, Regional Division of the Ministry of Labor and Employment (Superintendência Regional do Trabalho e Emprego - SRTE São Paulo)** - A federal government agency that ensures compliance with labor protection regulations and practices public policies to promote employment and professional training.

- **Rogério Sottili, Adjunct-Secretary of Human Rights in the City of São Paulo (Secretário-Adjunto Municipal de Direitos Humanos e Cidadania de São Paulo)** – Adjunct-Secretary Sottili has worked with workers’ rights and land reform for over 30 years as a member of the Worker’s Party (Partido dos Trabalhadores). He followed closely the discussions that led to the constitutional amendment as a member of President Dilma Rousseff’s Administration.

*NGOs*

- **National Confederation for Workers in Trade and Service (CONTRACS - Confederação Nacional dos Trabalhadores no Comércio e Serviços)** - National federation of service workers that, among other functions, focuses on building the capacity of domestic worker organizations. Interviewee: Lucilene Binsfeld (International Relations Secretary)
- **Domestic Workers’ Union in the City of São Paulo (Sindicato dos Trabalhadores Domésticos do Município de São Paulo)** - The union is dedicated to protecting domestic workers' interests and improving wages, hours and working conditions locally and nationally, having sought political support for the approval of the constitutional amendment to Article 7. Interviewees: Maria Lima (President), a Director, and five domestic workers.
- **Domestic Legal Institute (Instituto Doméstica Legal)** - An NGO that informs domestic workers and employers of their rights and responsibilities. It also gives online support and legal advice to domestic workers and employers. It is based in Rio de Janeiro. Interviewee: Mario Avelino (President)
- **House of the Migrant (Casa do Migrante)** – The house shelters migrants who arrive to **São Paulo with limited resources. They can accommodate 110** migrants (85 men and 25 women), but the recent increase in the number of migrants from Latin America and West Africa, particularly from Haiti, now overcrowds the house. They also offer vocational training and assist migrants in acquiring a labor card. Few migrants work as domestic workers, but the number has been slowly growing. Interviewee: Paolo Paresi (Director).

*Scholars and Relevant Experts*

- **Ana Amélia Mascarenhas Camargos, Felsberg Law Firm (Felsberg Advogados)** - Legal expert on labor law based in São Paulo. She has participated in public discussions about the constitutional amendment.
- **Ricardo Pereira de Freitas Guimarães, Freitas Guimarães Law Firm (Freitas Guimarães Advogados Associados)** - Legal expert on labor law based in São Paulo. He has participated in public discussions about the constitutional amendment.
- **Marcos Machuca, CEO of Lalabee** – Lalabee is a startup company that offers paid services to assist employers to manage their domestic workers according to the law.

## Annex 2: Interview Questions by Stakeholder Group

*For government agencies:*

New York State:

- What rights/protections does the Domestic Workers' Bill of Rights enumerate?
- What mechanisms do the public authorities employ to enforce the law? How do state and municipal authorities distribute responsibilities to enforce the law?
- What, if any, changes has the Department of Labor (DOL) and Division of Human Rights made to its complaint filing mechanism/process in response to the new law? If so, what are they?
- What changes has the Division of Human Rights observed in the number of cases reported? How has the number of employers fined for retaliating against workers changed? What is the fine structure?
- What is the typical length of time for a complaint to go through the investigation process?
- What are the outcomes of these cases?
- Has there been any progress on the inclusion of domestic workers in the State Employee Relations Act (SERA) since the 2010 DOL feasibility study on domestic worker collective bargaining?
- Who are their main partners in implementing the law (NGOs, domestic worker organizations, employers, or other groups)?
- What funding supports the implementation of the law? (e.g., have they hired additional staff, conducted an outreach campaign, printed literature, etc.)

São Paulo:

- What rights/protections are enumerated in Article 7 of the Brazilian Constitution for domestic workers?
- What mechanisms do public authorities employ to enforce and implement the law? How do federal and municipal authorities distribute responsibilities to enforce the law?
- What, if any, changes have public authorities observed in the number of registered domestic workers?
- What is the process required of employers to register their workers? How long does it typically take? What is the enforcement process? What is the fine structure, and how many fines have been issued?
- What changes have the Brazilian labor courts observed in the number and type (e.g., housemaids, caregivers, drivers, etc.) of complaints since the law was passed?
- What legal steps must domestic workers follow to file a lawsuit in court? What does the paperwork entail, is there a processing fee, does a domestic worker need to hire representation or is it provided?
- What is the typical length of time for a complaint to go through the investigation process? What are the outcomes of these cases?
- Who are the Ministry of Labor's main partners in implementing the law (e.g., NGOs, domestic worker unions, employers, etc.)?
- What changes has the Ministry of Labor observed in the labor market since the law was passed?

*For the NGO sector in NYC and São Paulo (includes NGOs, CBOs, domestic worker organizations)*

- What do they know about the new law?
- What is their general reaction to it? To what extent do they think it will improve working conditions for domestic workers?
- What are the law's strengths and limitations?
- To what extent do NGOs work with the government to enforce the law? If so, how do they work together (e.g., outreach, education, referrals of law violations)?
- What other methods do NGOs utilize to ensure enforcement of the law (e.g. protests targeting government agencies or employers)? Which methods appear to be the most effective?
- To what extent have NGOs observed an increase in domestic workers' awareness of their rights?
- Even though the Domestic Workers' Bill of Rights protects undocumented workers, to what extent does immigration status impact the likelihood that a domestic worker will assert her rights?
- How has the number of domestic workers accessing their organization's services changed recently?
- What types of complaints do they receive from domestic workers?
- To what extent do employers access these NGOs?

*For domestic workers:*

- To what extent is she aware of the new law and what her rights are?
- Is she involved with efforts to educate other domestic workers about their rights under the new law?
- To what extent is she involved with any organizing or advocacy efforts targeting government agencies or employers to ensure proper enforcement or compliance with the law?
- Are there any barriers that may prevent her from asserting her rights with an employer (e.g., fear of retaliation, immigration status, etc.)?
- What resources or service providers would she contact for help? What resources or services does she perceive are lacking?
- Has she ever been in a situation when she felt she was being exploited or abused? If so, what was her response?
- If she has filed a case with a government authority in the past, what was the process to file the case? How long did it take until her case was addressed and resolved? How simple or complex was the process?
- Since the new law came into force, does she feel that work conditions have improved, worsened, or remained the same? Why?
- Is her current situation (i.e., wages, time off) in compliance with the terms of the law?

*For employers:*

- How much do they know about the new laws?
- What is their primary source of information about the laws?
- What do they know about their rights as employers, in case the domestic worker is not fulfilling her/his duties according to the law?
- To what extent do they comply with the new law? If they do not, why?