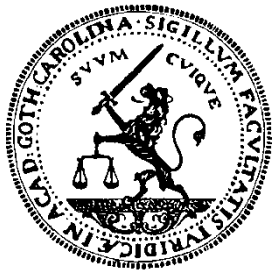

FACULTY OF LAW
Lund University

Josefin Lundmark

‘In a House There Are No Hours’ A Comparative Study of the Regulation on Working Time for Domestic Workers in Thailand and Sweden

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Contents

Summary

This paper explores the extent to which working time legislation in Thailand and Sweden protects the right to decent working time for domestic workers. This is examined through a comparative analysis of the national working time legislation in the two countries and the parameters of decent working time established in international labor law. This is the basis for a subsequent discussion on the regulation of working time in domestic work from a materialist feminist perspective. The research questions posed include: what is the content of the right to decent working time in international labor law? To what extent does national labor law regulate and protect the right to decent working time for domestic workers in Thailand and Sweden, and what similarities and differences are there between Thailand and Sweden in this regard? How can a lack of consideration for this right in Thai and Swedish labor regulation be understood from a materialist feminist perspective?

To answer these questions, the paper provides a legal dogmatic analysis of the content of the right to decent working time in international law, examining international labor standards and other parameters established by the International Labor Organization (ILO). It also examines the regulation of working time in domestic work in Thailand and Sweden, to conclude that the right to decent working time for this group of workers often is insufficiently protected in the national legislation. Some groups of domestic workers work longer hours than general limitations on working time permit, while other groups are excluded from the scope of protective labor legislation. The concluding part of the paper is a discussion on the failure to regulate and protect the right to decent working time in domestic work from the perspective of materialist feminist theory. The last chapter is a discussion on working time legislation for domestic workers in relation to the different roles of women in the international division of labor and patriarchal and racist notions inherent in the capitalist system that, according to materialist feminist theory, have led to a general devaluation of women's work.

Sammanfattning

Denna uppsats syftar till att undersöka i vilken utsträckning arbetstidslagstiftningen i Thailand och Sverige skyddar rätten till *decent working time* för hushållsarbetare. För att uppnå detta jämförs arbetstidslagstiftningen i de två länderna med hur *decent working time* definieras inom den internationella arbetsrätten. Denna analys utgör grunden för en diskussion om arbetstidsregleringen för hushållsarbete från ett materialistiskt-feministiskt perspektiv.

Uppsatsen söker besvara dessa centrala forskningsfrågor: hur är rätten till *decent working time* formulerad i internationell arbetsrätt? I vilken utsträckning skyddar och reglerar den nationella arbetsrätten denna rättighet för hushållsarbetare i Thailand och Sverige, samt vilka likheter och skillnader finns det mellan lagstiftningen i Thailand och Sverige i detta avseende? Hur kan ett svagt skydd för denna rättighet inom den thailändska och svenska arbetsrätten förstås från ett materialistiskt-feministiskt perspektiv?

Första delen av uppsatsen består av en rättdogmatisk analys av internationella konventioner och doktrin. Denna del utreder vad rätten till *decent working time* består av enligt ILOs normbildande arbete. För att skydda denna rättighet måste nationell lagstiftning upprätthålla samma begränsningar av antalet arbetstimmar, samt bejaka de krav som ställs på raster, vilotid och semester. Den nationella regleringen av arbetstid måste också bejaka de dimensioner av *decent working time* som fastslagits i ILOs arbetstidsforskning – hälsosam arbetstid, arbetstid som går att kombinera med familjeliv, arbetstid som bejakar jämställdhet, produktiv arbetstid och arbetstid som arbetstagaren till någon grad kan besluta över. Sedan följer en genomgång av arbetstidslagstiftningen inom hushållsarbete i Thailand och Sverige, som ligger till grund för en analys av huruvida rätten till *decent working time* inom hushållsarbete skyddas i den nationella lagstiftningen i dessa två länder. Slutsatsen är att det arbetsrättsliga skyddet för hushållsarbetare i detta hänseende ofta är svagare än för andra arbetstagare, vilket strider mot de krav som ställs inom den internationella arbetsrätten. Vissa grupper av hushållsarbetare tillåts arbeta längre övriga arbetstagare, andra grupper omfattas inte av skyddsarbetslagstiftning. Den avslutande delen av uppsatsen diskuterar dessa vanligt förekommande brister i arbetstidslagstiftningen ur ett materialistiskt-feministiskt perspektiv. Kapitlet kopplar dessa rättsliga brister till kvinnors roll inom den internationella arbetsfördelningen, med särskilt fokus på hur patriarkala och rasistiska föreställningar legat till grund för en undervärdering av kvinnors arbete.

Preface

I would like to thank Professor Mia Rönnmar for her excellent supervision of my thesis. I appreciate your constructive comments at every stage of my work on this project.

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To Mikky Piyavat. I appreciate your support throughout my field study in Bangkok. Thank you for your generosity.

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Abbreviations

ASEAN	Association of Southeast Asian Nations
DLPW	Department of Labour Protection and Welfare
EU	European Union
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ILOSTAT	ILO database of labor statistics
ITUC	International Trade Union Confederation
LPA	Labour Protection Act B.E. 2541 (1998)
LRA	Labour Relations Act B.E. 2518 (1975)
MWC	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
NATLEX	ILO database of national labour, social security and related human rights legislation
SWEA	Swedish Work Environment Authority
TEU	Treaty of the European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations

1 Introduction

1.1 Subject

Working time regulation is a central issue on the labor market. It has been a concern of the International Labour Organization since its genesis in 1919. The first convention adopted by the International Labour Conference concerned the working hours in industrial undertakings and set the limit of acceptable working time to 48 hours per week. Today, decent working time is an integral part of ILO's Decent Work Agenda. Rules to protect the right to decent work is meant to be implemented at the national level, guided by the standards set in international labor instruments.

Despite international attention to decent limits on working time, working hours in domestic work is often neglected by national legislators. To improve the protection for domestic workers, the International Labour Organization adopted the Convention concerning Decent Work for Domestic Workers, (No. 189) and Recommendation, (No. 201) in 2011. The Preamble of the Convention recalls the 'commitment of the International Labour Organization to promote decent work for all'. A review produced by the International Labour Office shows that over half of the countries surveyed allows longer hours for domestic workers than other categories of workers (International Labour Conference, 2010, p. 49). As the title of this paper suggests, decent working time for domestic workers is far from being realized in many countries.

1.2 Purpose and Research Questions

This paper explores the extent to which the national legislation of Thailand and Sweden protects the right to decent working time for domestic workers. This is examined through a comparative analysis of the parameters of decent working time and working time legislation in the two countries, which is the basis for the subsequent discussion on domestic work from a materialist feminist perspective on possible reasons for the elusiveness of the right to decent working time for these workers.

Insufficient protection of the right to decent working time in this sector is a feature of the labor legislation in almost every country. One purpose of this paper is thus to discuss the lack of protection for domestic workers, not only in the national legal context but also with regard to the role of reproductive labor in the international division of labor. To achieve the stated aim, the paper seeks to answer the following central research questions:

- What is the content of the right to decent working time in international labor law?
- To what extent does national labor law regulate and protect the right to decent working time for domestic workers in Thailand and

Sweden, and what similarities and differences are there between Thailand and Sweden in this regard?
- How can a lack of consideration for this right in Thai and Swedish labor regulation be understood from a materialist feminist perspective?

1.3 Materialist Feminist Theory

The theoretical framework of the thesis is material feminism. This theoretical perspective is applied to relate legislation on working time for domestic work to the role of women's work, especially reproductive labor, in the *new international division of labor*, commonly understood as the 'international restructuring of commodity production that has taken place since the mid '70s, when … the multinational corporations began to relocate their industrial outfits, especially in labor-intensive sectors like textile and electronics, in the "developing countries"' (Federici, 2012, p. 67). This division of labor, resulting from the globalization of the labor market, has also introduced an 'international redistribution of reproductive work' and 'transformed the "Third World" into an immense pool' of cheap productive and reproductive labor (ibid., p. 70). While the new international division of labor affects all women, it affects women differently depending on race, class and citizenship (James, 2012, p. 176). With regard to reproductive work, the organization of labor has created a hierarchical relationship between women, 'similar to of that between white and black women under the apartheid regime in South Africa' (Federici, 2012, p. 73). Since the early 1990s, female migrants from the global South constitute an 'increasing percentage of the workforce employed in the service sector and domestic labor' in the North, a process described by Federici as a 'new colonial solution to the "housework question"' (ibid., pp. 71–73).

The role of the housewife in the organization of labor in society is central to the discussion on the role and regulation of paid domestic work from a materialist feminist perspective. In labor law, work and family has traditionally been viewed as 'two separate spheres which occasionally collide' (Conaghan, 2005, p. 26). Conaghan speaks of an official narrative on how these spheres have only recently converged as a result of women's participation in the labor market. Before women joined the workforce, these spheres 'served different social functions, met different human needs, and involved the pursuit of different kind of activities', according to this narrative. Conaghan rejects this view of the relationship between work and family, in favor of a narrative of long-term interdependence:

> '… for workers to be free to engage in paid work on an exclusive, timed work basis, arrangements must be in place to ensure that other essential social tasks, particularly those associated with the short-term and long-term reproduction of labour, continue to the carried out' (ibid., p. 28).

The need has resulted in a 'gendered allocation of labour' (ibid., p. 29), i.e. a male breadwinner and an unwaged housewife. The organization of labor in the capitalist system is based on this couple (Mies, 1986, pp. 109–110).

Women are defined as housewives in contrast to their worker husbands and their labor is defined as unpaid housework in contrast to their husbands' wage-work. This gendered allocation of labor creates a '*de facto* class division between working-class men and women' (ibid.). Mies speaks of the *housewifization of women* to describe a process of 'externalization, or ex-territorialization of costs which otherwise would have to be covered by capitalists'. In this process, women are reduced to housewives, not workers; women's labor becomes a 'natural resource, freely available like air and water'. All work performed by women – waged and unwaged – is devalued as a result of this 'myth of female incapacity', to speak with James (2012, pp. 54–55). According to Mies (1986, p. 120) the process of housewifization:

> **'**makes a large part of labour that is exploited and super-exploited for the market invisible; it justifies low wages; prevents women from organizing; keeps them atomized; gears their attention to a sexist and patriarchal image of women, namely the "real" housewife, supported by a man, which is not only not realizable for the majority of women, but also destructive from a point of view of women's liberation.'

The mystification of women as housewives under capitalism is a 'necessary pre-condition' for the smooth functioning of a system with a central aim to reduce the cost of labor (ibid.). In this process, reproductive labor has come to be defined as a natural attribute of the female character. *Reproductive labor* is often understood as domestic labor or unwaged housework traditionally performed by women. Reproductive labor is the 'complex of activities and relations by which our life and labor are daily reconstituted' (Federici, 2012, p. 5), and therefore 'the foundation of every economic and political system' (ibid., p. 2).

These central concepts of the material feminism are instrumental in the discussion on the regulation of working time for domestic workers in Thailand and Sweden.

1.4 Method and Material

Legal dogmatic method is the interpretation of sources of law to establish *lex lata* (Kulin-Olsson, 2011). In the first part of the paper, this method is used to determine the content of the right to decent working time in international law. Article 38.1 of the Statute of the International Court of Justice lists treaties, international customs, and general principles as primary sources of law. Judicial decisions and scholarly writings are designated as subsidiary sources. The analysis of the right to decent working time is based on primary sources of law, such as international labor standards drafted by the ILO's constituents and ratified by member states. These instruments constitute legally binding norms on working time. Relevant information is also found in the recommendations adopted by the International Labour Organization. These labor standards are non-binding guidelines. They often supplement conventions with additional or more detailed provisions, or address important issues outside the scope of the convention. Provisions of other human rights instruments of binding and non-binding nature, such as

the Universal Declaration on Human Rights and the International Covenant on Economic, Social and Cultural Rights, are briefly discussed to place the right to decent working time within the broader context of human rights. Secondary sources in the form of academic literature on the subject are also relevant in the examination of the concept of decent working time.

The second part of the paper is a comparative analysis of the national laws of Thailand and Sweden. The comparative method is used to examine similarities and differences in laws on working hours for domestic work, and analyze how they advance the realization of decent working time from the perspective of materialist feminism. The first step in comparative labor law is to produce a scientific analysis of relevant law and practice in two or more legal systems to compare any similarities and differences (Blanpain, 2001, p. 5). Legal dogmatic method is used here. As a member of the European Union, Sweden is bound by the Union acquis. Swedish labor law is informed by directives passed by the institutions of the European Union and the judgments of the European Court of Justice. Other central sources of law are statutes, case law, preparatory work, and legal doctrine (Kulin-Olsson, 2011). In the field of labor law, collective agreements between trade union and employers' organizations constitute another, and most significant, source of law. The main sources of law in Thailand are the constitution, acts and statutes, subordinate legislations such as regulations, and Supreme Court judgments. Collective agreements may also inform the conditions of employment. In addition to these legal sources, reports by ILO and national labor organizations provide information on national legislation. Other written material of importance is academic literature on the subject of national law. Information on the specific situation in each country has also been obtained through interviews with staff of organizations and trade unions. Important information on the rights of Thai domestic workers has been provided by Ms. Poonsap Tulaphan, manager of the Foundation for Labour and Employment Promotion (Homenet Thailand). For the situation in Sweden, relevant information has been supplied by Anita Lundberg, ombudsman at Kommunal – the Swedish Municipal Workers' Union.

The use of comparative method naturally contains certain obstacles. Challenges related to language and terminology are common in comparative labor law (Blanpain, 2001, pp. 16–17). A problem of this kind in this study is the inability to use legal sources of Thai law in its original language. Any primary sources, such as statutes and regulations, have been translated into English. This is a limitation of the scientific accuracy of the study. To overcome this problem, secondary sources of highest possible authority have been used, for example NATLEX – the legal database of the ILO. The accuracy of the translation of any legislation or case law has also been discussed with legal scholars. A second challenge inherent in the comparative method is the transplantability issue. Every national regulation is part of a larger legal system, shaped by conditions specific to the country in question. One cannot assume that similar legislation has the same effect in different legal settings. Still, some legal concepts are more easily transplanted than others (Blanpain, 2001, pp. 18–20). Kahn-Freund speaks of 'degrees of transferability' (1974, p. 6). He argues that rules relating to collective labor law, which directly affects the distribution of power in the

industrial relations system, are more difficult to transplant than norms that fall under individual labor law, such as limitations on hours of work. Transplantation of such protection standards is often quite successful, as illustrated by the success of many ILO Conventions on such subjects (Blanpain, 2001, p. 20).

The last part of the thesis is an analysis of relation between the role of domestic work in society and the failure to achieve decent working time for these workers. The results from the comparative analysis of Thai and Swedish labor law are explored from a material feminist perspective. The understanding of domestic work as a traditional means to exploit women in a capitalist and patriarchal system is central to this theory. Feminist literature on domestic work and the international division of labor is used to situate this type of work within the broader context of society.

1.5 Delimitations and Central Concepts

To define domestic work on the basis of the tasks performed by the worker has proven to be almost impossible. Domestic workers perform a wide range of tasks such as cleaning, cooking, doing laundry, and caring for children and elders. The understanding of what domestic work entails is dependent on a number of factors, *inter alia*, the national context. Using the definition of domestic work established in the Convention concerning Decent Work for Domestic Workers, 2011 (No. 189), domestic work is understood here as 'work performed in or for a household or households' (Article 1). Domestic worker means 'any person engaged in domestic work within an employment relationship'. This definition of domestic workers includes au pairs. Their working days are shorter than normal to allow for language studies. Certain laws that regulate domestic work are also applicable to au pairs. This paper will only cover the legal protection of au pairs to the extent that it overlaps with the general labor law on domestic work. Rules applicable to this specific type of employment only will not be discussed.

The problems relating to working conditions in domestic work are numerous. Domestic workers are vulnerable workers; physical and mental abuse by the employer is common. Forced labor is prevalent in this sector. Furthermore, many domestic workers are children. This paper is focused on working time. The lack of protection of the private time of these workers is significant: the unusually long working hours of this category of workers hinders them from enjoying a life outside waged work to the same degree as other employees.

The study focuses mainly on statutory regulation rather than norms established through collective bargaining. The low percentage of organized domestic workers is an important issue that affects the protection of their rights at work. While this paper does not offer a deeper analysis of this challenge, the role of collective agreements is acknowledged and discussed, especially in the case of Sweden.

The paper examines labor legislation in Thailand and Sweden. The national circumstances of these countries pose different challenges to the situation for domestic workers depending on, inter alia, the degree of

formality of domestic work, how the employment relationship is organized and the prevalence of unionization. The situation in these countries does not give a complete picture of the possibility of achieving decent work for domestic workers, but are meant to demonstrate the universality of some challenges that appear almost inherent in domestic labor. With regards to the geographical scope of the study, in the case of Thailand, the comparison is limited to domestic workers in Bangkok. Though the national legal system is generally applicable, labor norms may differ between the capital and rural areas. In addition, the differences between the situation for workers in the capital and in other areas are sometimes of such magnitude that is it difficult to speak of labor issues in a general manner. In Sweden, the discrepancies in the application of legal norms in metropolitan areas and rural areas are insignificant, making statements on the general situation in this country less problematic.

1.6 Current Research

Important scholars in the field of working time research are Jon C. Messenger and Sangheon Lee. Jon C. Messenger is specialized in, *inter alia*, working time issues, gender and the informal economy. Sangheon Lee has published research on working time as well as other employment conditions and quality of employment. Another important researcher is Deidre McCann, who has published research on working time and the balance between work and family life from a legal perspective (Lee et al., 2007, p. xiii). These researchers have explored the concept of decent working time in several publications – together and in collaboration with others. This thesis applies some of what they have written on the subject of decent working time to the specific situation of domestic workers in Thailand and Sweden.

The International Labour Office is influential in this field of research. Publications include research on working time specifically in reference to the situation for domestic workers.

Legal scholars who have published on the topic of domestic work are, for example, Judy Fudge and Catharina Calleman. The latter has written extensively on the subject of domestic work in Sweden. Fudge has examined domestic work from an international legal perspective. Both researchers examine the relationship between the precariousness of work and the socio-economic status of the workers. The precariousness of domestic work has also been studied by scholars outside the legal sphere, for example by sociologists Rhacel Salazar Parreñas and Bridget Anderson.

2 The Right to Decent Working Time in International Law

The objective of this chapter is to introduce the content of the right to decent working time. The concept has been developed by the International Labour Organization. The chapter will also introduce the basic characteristics of the Organization and its Decent Work Agenda. After this, an examination of the concept of decent working time, as informed by international labor standards and research on working time issues, follows. Provisions on working time in other human rights instruments are also examined. Finally, the content of the right to decent working time for domestic workers is examined. This includes an examination of recent developments in international law, specifically the adoption of the Convention concerning Decent Work for Domestic Workers, 2011 (No. 189) and Recommendation, (No. 201).

2.1 The International Labour Organization and the Decent Work Agenda

Labor law has traditionally been characterized as employee protection law. This view is employed by the International Labour Organization, established by the Peace Treaty of Versailles in 1919 (Vranken, 2009, p. 34). The Preamble of the ILO Constitution calls for an improvement in working conditions that involve 'injustice, hardship and privation', in order to prevent 'unrest so great that the peace and harmony of the world are imperilled'. A number of areas in which worker protection must prevail are then listed.

The Preamble also emphasizes the need for international labor standards 'whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries'. A central function of the ILO is to establish such international labor standards for the protection of workers. This process is regulated by Article 19 of the ILO Constitution. International labor standards are found in conventions and recommendations. Conventions create legally binding obligations for ratifying States, while recommendations supplement conventions and give 'guidance as to policy, legislation and practice' (International Labour Office, 2012, p. 2). The conventions and recommendations adopted by the International Labour Conference are minimum standards, and shall not be 'deemed to affect any law, award, custom or agreement which ensures more favorable conditions to the workers concerned than those provided for in the Convention or Recommendation' (Article 19, para. 8). International labor standards are characterized by a high degree of flexibility, which is created through, for example, 'clauses allowing (sometimes temporarily) acceptance of a specified lower standard by countries where, for example, no legislation

on the subject in question existed prior to ratification or where the economy or administrative or medical facilities are insufficiently developed', or 'clauses allowing exclusion of, for example, specified categories of occupations or enterprises or sparsely populated or undeveloped areas' (International Labour Office, 2012, pp. 42–43).

As a general rule, member states are only bound by legal obligations in conventions that they have ratified. However, as established in the 1998 Declaration on Fundamental Principles and Rights at Work, all members of the ILO are bound by four core principles on the basis of their membership, specifically: the freedom of association and the effective recognition of the right to collective bargaining, the effective abolition of child labor, the elimination of all forms of forced or compulsory labor, and the elimination of discrimination in respect of employment and occupation. These principles are also covered in eight core conventions. In addition to these eight conventions, the ILO has awarded special priority to four governance conventions that are fundamental for the practical achievement of international labor standards. Other conventions are referred to as technical instruments.

The implementation of ratified conventions and other labor standards on the national level is overseen by a number of supervisory mechanisms, unique to of the ILO. According to Article 22 of the ILO Constitution, member states shall submit reports on the progress to a supervisory body called the Committee of Experts on the Application of Conventions and Recommendations, which consist of 20 legal experts. The Committee of Experts then comments on the reports. This is known as the regular supervisory procedure. In addition, Articles 24 and 26 of the Constitution allow for special complaints procedures, where the failure of a member State to 'secure in any respect the effective observance' of a convention can be referred to Governing Body (Boivin and Odero, 2006, pp. 207–209).

Decent work for everyone is the aim of all activities of the Organization today. This was first coined in 1999 by then Director-General Juan Somavía in his report for the 87th session of the International Labour Conference. Decent work is understood as productive work carried out in conditions of freedom, equity, security and human dignity (International Labour Office, 1999, p. 3). Decent work must permeate every branch of the world of work. As a result of the economic globalization, changes in the 'the nature and form of employment relationships' have occurred in developing as well as developed nations (Fudge and Owens, 2006, pp. 20–21). This has necessitated a shift in focus toward the informal labor market and those outside standard employment relationships, such as the self-employed and those in reproductive labor (International Labour Office, 1999, pp. 3–4). The view of the ILO is that 'all those who work have rights at work' (ibid.).

To achieve decent work for everyone, the ILO has adopted the Decent Work Agenda, which in addition to workers' protection also calls for the 'respect of democracy in overall labour relations, including at the workplace' (Bronstein, 2009, pp. 1–2). This Agenda is intended to achieve the goal of decent work through the implementation of four strategic objectives: the promotion of rights at work; employment; social protection;

and social dialogue. Gender equality is a crosscutting objective at the core of the Decent Work Agenda.

2.2 Decent Working Time

Reasonable limitations on working time are a core concern of the International Labour Organization and its Decent Work Agenda. Decent working hours is relevant to the promotion of rights at work and the consolidation of social protection – two strategic objectives of the Agenda. The content of the right to decent working time is based on limitations on working time established by the international labor standards and current research. Discussions on decent working time have been most prevalent in wealthy European countries. This is also where much of modern labor law was born as 'reaction to both the excesses of the Industrial Revolution and the abuse of rights arising out of nineteenth century civil law' (Bronstein, 2009, p. 1). The European workers have seen a 'progressive reduction' of working hours during the last century (McCann, 2004, p. 10). Today, this process of reduction has come to a halt. Instead, the focus of working time policies has shifted towards flexibility in the labor market (ibid., p. 11). This has involved the 'relaxation of restrictions on varying and individualizing working time schedules and on work during unsocial hours' (ibid., p. 12). The progress towards a standardization of daily and weekly working time has now been replaced by 'diversification, decentralization and individualization of working hours' (Anxo et al., 2004a, p. 2).

Discussions on the organization of working hours and its compatibility with decent working time play a minor role in low- and middle-income countries, where working time standards often are more generous than in the West. Incentives for legal tools to increase flexibility are often weak in these countries: overtime may be 'readily available' for the employer to enhance working time flexibility and informal employment is prevalent (Lee et al., 2007, pp. 2–3).

The call for flexibility in low- and middle-income countries as well as high-income nations has led to a discussion within ILO on the need for an update of current working time standards. In a General Survey submitted to the International Labour Conference in 2005, the Committee of Experts acknowledges that 'Conventions Nos. 1 and 30 do not fully reflect modern realities in the regulation of working time' **(**International Labour Conference, 2005, para. 322). The Committee noted further that 'these two instruments are viewed in an increasing number of countries as prescribing overly rigid standards' and that 'the "fixed" working hours system adopted by both conventions as a cornerstone for the regulation of working time conflicts with today's demands for more flexibility' (para. 323). The Committee emphasized that international minimum standards of working hours are still relevant, especially from a human rights perspective, but that "the changes that have taken place since these two instruments were adopted warrant their revision" (paras. 317 and 328). As is evident from the above, current limitations on working time are questioned by the constituents of ILO. The standards are increasingly deviated from, not only in low- and middle–income countries but also in high-income nations. While members

of the ILO constituency call for more flexible solutions in working time regulation to, for example, increase profitability, they are bound by current labor instruments. These conventions create the legal parameters of decent working time today. In addition, the ILO has proposed five essential dimensions of decent working time based on existing legal standards as well as research on working time. These dimensions are meant to act as guidelines for the advancement of decent working time for everyone (Messenger, 2006, p. 420).

2.2.1 International Labor Standards on Working Time

The regulation of hours of work has been a core concern for the ILO since its birth. The Peace Treaty of Versailles, by which the ILO was created, contained nine principles of importance for the social policy of the League of Nations. One of these principles was the eight-hour working day and the 48-hour working week; another was the principle of twenty-four hours of weekly rest for workers (Lee et al., 2007, pp. 8–9). The Preamble of the ILO Constitution outlines how the improvement of the regulation of working hours, 'including the establishment of a maximum working day and week', is a condition for social justice and 'universal and lasting peace'.

ILO has adopted international labor standards of binding nature to limit working hours. The first convention of the Organization was the Hours of Work (Industry) Convention, 1919 (No. 1), which established the 48-hour working week as standard for the industry (Article 1). The same limit was later adopted for workers in commerce and offices (Article 3 of the Hours of Work [Commerce and Offices] Convention, 1930 [No. 30]). A normal working day should not exceed eight hours according to these conventions (Article 2 of the Hours of Work [Industry] Convention, 1919 [No. 1] and Article 3 of the Hours of Work [Commerce and Offices] Convention, 1930 [No. 30]). In connection to limitations on daily working hours, it is important to note that no international labor standard protects the right to regular, minimum rest breaks during the working day (International Labour Office, 2011, p. 70). Short periods of rest have a significant effect on the well-being of the worker.

These limitations on daily and weekly hours of work were adopted to protect workers' health and to hinder that unhealthy working hours were used increase profitability (Messenger, 2006, p. 420). Today, the 48-hour working week is no longer the global standard, though it is still prevalent in South America and Asia (Evain, 2008, p. 10). A majority of ILO member states have adopted national legislation that prescribes a lower limit on the normal working hours per week (Lee et al., 2007, p. 12).

These instruments also regulate overtime. According to these conventions, workers are entitled to a pay increase of at least 25 percent during overtime work. The worker must receive information on the number of hours of overtime required. Conventions Nos. 1 and 30 do not specify a maximum limit on overtime work but according to the Committee of Experts, periods of overtime work must be 'reasonable, so as not to

jeopardize the principle of limiting working hours' (International Labour Office, 2011, p. 10).

In 1935, the 40-hour working week was established as the ILO's vision of acceptable hours of work in the Forty-Hour Week Convention, 1935 (No. 47). The reduced hours were originally motived by high rates of unemployment in the 1930s (Preamble of Forty-Hour Week Convention, 1935 [No. 47]). Today, this lower standard is also motivated by other factors, such as a fair balance between work and family life (McCann, 2004, p. 11). The Reduction of Hours of Work Recommendation, 1962 (No. 116) reinforced the 40-hour working week as 'a social standard to be reached by stages if necessary' in the Preamble. Today, more than 40 percent of countries have adopted this standard. Most are high-income nations, though the 40-hour week is also prevalent in Central and Eastern Europe as well as Africa (Evain, 2008, p. 9).

International labor standards have also been adopted on the subject of night work. One of the first international instruments of the ILO banned night work for women in industrial undertakings (Article 3 of the Night Work [Women] Convention, 1919 [No. 4]). The current Night Work Convention (No. 171) from 1990 does not prohibit either women or men to work during the night, but requires that specific measures are taken to protect these workers. Women who are pregnant or have recently given birth shall be given alternative hours of work (Article 7). Night work is defined as 'work performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m.' (Article 1).

The ILO has also adopted conventions and recommendations on weekly rest. The general standard of twenty-four consecutive hours of rest every seven days has been established for industrial workers as well as office and commerce employees in two conventions (Article 2.1 of the Weekly Rest [Industry] Convention, 1921 [No. 14], and Article 6.1 of the Weekly Rest [Commerce and Offices] Convention, 1957 [No. 106]). The period of rest shall, whenever possible, 'be granted simultaneously to the whole of the staff of the industrial or commercial undertaking' and 'coincide with the days already established by the traditions or customs of the country in question' **(**Articles 2.2 and 2.3 of the Weekly Rest [Industry] Convention, 1921 (No. 14), and Article 6.2 and 6.3 of the Weekly Rest [Commerce and Offices] Convention, 1957 [No. 106]). According to comments by the Committee of Experts, the principles of 'regularity, continuity and uniformity' capture the requirements on weekly rest in the two conventions (International Labour Office, 2011, p. 12).

On the topic of longer periods of rest and recreation, employees are awarded three working weeks of paid holiday per year by the Holidays with Pay Convention (Revised), 1970 (No. 132). The minimum rules on paid holiday are mandatory, due to the fundamental need to protect workers' right to rest (International Labour Office, 2011, p. 13). Workers cannot relinquish their right to paid annual leave.

The legal parameters of decent work set by ILO conventions are minimum standards. They are also used to assess the progress of countries in the realization of decent working time. National legal norms on maximum hours of work and paid annual leave are legal framework

indicators of use in such assessments (International Labour Office, 2013b). Ratifications of important conventions are also relevant indicators.

2.2.2 Further Parameters of Decent Working Time

To advance the concept of decent working time beyond the limits set by international labor standards, the ILO has proposed five additional dimensions of decent working time, based on research on working time trends in the industrialized world (Boulin et al., 2006, p. 20). These parameters are healthy working time, family-friendly working time, gender equality through working time, productive working time, and choice and influence regarding working time (ibid., p. 25). Anxo et al. (2004a, p. 7) acknowledge the problems with adopting a general definition of decent working time based on the needs and preferences of an average worker, since the definition of decent working hours and adequate free time is likely to depend on the specific concerns of the individual worker at different stages of their life. However, these parameters represent 'the most significant dimensions of decent working time' and provide a 'broad policy framework from which to consider' how decent working time for all can be achieved (Anxo et al., 2004b, p. 195, Boulin et al., 2006, p. 26).

Healthy working time is an essential dimension of decent working time. The early conventions adopted on working time were aimed at protecting the health of the employees (Messenger, 2006, p. 420). International labor standards have been drafted to hinder employers from using unhealthy working hours to increase their profitability (ibid.). Legislation that restricts paid overtime is still of importance, as regular use of overtime can become a 'cost-saving strategy' for employers who avoid the cost of expanding their workforce by extending the hours of work for their employees (ibid., p. 422). Frequent overtime can also create a dependence on the extra income for the workers.

Long working days and night work pose a threat to workers' well-being. Medical research shows that working time beyond fifty hours per week has negative health effects (Anxo et al., 2004b, p. 196). Depending on the nature of the work, fatigue caused by long hours of work may also pose a threat to the safety of others (Messenger, 2006, p. 421). The health effects of long hours of work have historically been a central concern in the adoption of international labor standards on work time and is an important dimension of today's discussion on how to realize decent working time.

Family-friendly working time is another dimension of decent working hours. The need to balance the hours at work with family life has not always been a concern in international labor standards or national law. The workplace has traditionally been treated as a 'discrete and bound sphere of social and economic activity in which its participants are fully and exclusively engaged' (McCann, 2004, p. 15). Today, work-family balance is frequently discussed in many high-income nations. Fudge (2005, p. 261) views the growing importance of work-life balance as a result of the recent dissolution of the traditional gender contract, which stipulates that the man is engaged in waged labor while the woman performs reproductive work at

home. Family-friendly working time has become increasingly important because of the growing numbers of women on the labor market. As the traditional division of tasks changes, the hours at work must be organized to resolve the conflict between work and family life.

The need to adapt working hours to family life is not equally recognized around the world (Lee et al, 2007, p. 3). In low- and middle-income states, the discussion on family-friendly working hours is not as frequent as in high-income nations. This should not be taken as indicative of fewer problems related to work-family balance. The conflict between work and family responsibilities is commonly resolved through 'gender-biased informal employment' or 'extended family support' in these nations (Lee et al., 2007, p. 4). This dimension of working hours, i.e. the possibility to combine work and family life for all workers, is in varying need of attention in different parts of the world. It is a central component of the process towards decent working time.

Decent working time also requires working hours to be organized for the *advancement of gender equality*. The promotion of gender equality is an overarching objective of the Decent Work Agenda. It must also be a key consideration in the development of working time standards (Anxo et al., 2004b, p. 202). If this is not recognized as an integral part of any measure taken on working time, labor market policies aimed at the realization of decent working time might increase gender inequality (ibid., pp. 202–203). For example, flexible working time arrangements might increase the employee's influence over their hours of work but could also reinforce 'gender-based labour market segregation' (McCann, 2004, p. 13). Part-time work in high-income countries is usually low-status and low-paid work. Employment of this character is usually found in female-dominated sectors, due to the ability to combine part–time work with care responsibilities. As a result, women often are stuck in low-paid work. In contrast, many high-status jobs require long hours of work. This effectively keeps women with care responsibilities out of this type of employment. In addition, men, who usually occupy these positions, are less able to partake in family life and domestic work (ibid., p. 15). As this example shows, policies that serve other dimensions of decent working time must also further gender equality for the realization of decent work for all.

The fourth dimension of decent working time is based on the need for *productivity during working hours*. This is related to the need for healthy working hours, as lengthy working days affects the wellness of the workers and thus hampers his or her productivity (Anxo et al., 2004b, p. 205). Research suggests that shorter work days also lead to increased productivity, not only because of the physical well-being of the employees, but because of better attitudes and morale among staff (ibid., p. 206). Productive working time should be of interest to the employer, as it leads to increased efficiency (ibid., p. 207). The significant effect it has on the well-being of the employee makes it an important dimension of decent working time.

A fifth parameter of decent work is the right of the worker to *choose and influence their hours of work*. Traditionally, rigid working time arrangements have dominated the formal labor market (McCann, 2004, p. 11–12). Today, flexibility has become a central concept in the discussion on

working time, especially in Europe. However, as Anxo et al (2004a, p. 3) point out, measures taken to increase flexibility do not always benefit workers, but are implemented to remove 'restrictions on unsocial hours' that have been enforced to protect the health of employees. Still, policies that successfully further worker choice without hampering other dimensions of decent work could improve work-family balance (McCann, 2004, p. 16). According to McCann (ibid.) such legislation could potentially decrease gender inequality by making shorter working days more prevalent. This would allow women to decrease the working hours in their current jobs, instead of being forced to seek out traditionally low-paid part-time work. Choice over working hours could facilitate women's participation on the labor market and allow for men to organize their work around the needs of their family. In addition, influence over working time – 'the exercise of choice' – is an important factor to increase productivity (Anxo et al., 2004b, p. 207).

2.3 Working Time in Other Human Rights Instruments

In addition to the research and standard-setting activities of the ILO, decent working time is a matter of concern for other international actors. The right to a reasonable limitation on working hours is frequently found in human rights instruments at international and regional levels.

At the international level, the right to reasonable working hours is established in the Universal Declaration on Human Rights (UDHR), generally viewed as the foundation of human rights law. Article 24 states that 'everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.' Furthermore, this right is included in the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the United Nations General Assembly in 1966. State parties are legally bound by the Covenant to recognize the 'right of everyone to the enjoyment of just and favourable conditions of work' (Article 7). Particular attention shall be given to '[r]est, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays' (Article 7 d). The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) states that 'migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of … overtime, hours of work, weekly rest, [and] holidays with pay' (Article 25 a).

Furthermore, norms on working hours are often found in human rights instruments adopted at the regional level by intergovernmental organizations. The European Social Charter, adopted by the Council of Europe in 1961 to complement the European Convention on Human Rights and Fundamental Freedoms and revised in 1996, requires the Parties to, *inter alia,* 'undertake to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit' and 'to ensure a

weekly rest period which shall, as far as possible, coincide with the day recognized by tradition or custom in the country or region concerned as a day of rest' (Articles 2.1 and 2.5 of the European Social Charter). In the European Union, the Charter of Fundamental Rights of the European Union awards every worker the right to 'limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave' as well as 'working conditions which respect his or her health, safety and dignity' (Article 31). Since the Treaty of Lisbon entered into force in 2009, this Charter has full legal effect. Similar provisions are found in human instruments of the Organization of American States. The state parties to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights – the Protocol of San Salvador – recognize the right to work under 'just, equitable, and satisfactory conditions … particularly with respect to …. reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work' (Article 7). The ASEAN Human Rights Declaration also acknowledges the right to 'just, decent and favourable conditions of work' (Article 27.1).

In addition to these universal and regional human rights standards on reasonable limitations to working hours, decent work has become a central concept in the international development agenda. 'Full and productive employment and decent work for all' is one of eight Millennium Development Goals established by world leaders after the Millennium Summit in 2000 to guide the international development work (Target 1.B). Decent work for all is viewed as a step to eradicate extreme poverty and hunger. This entails the idea of decent working time. These treaties show that working time is not just a concern of the ILO but a central concept in the international human rights sphere.

2.4 Decent Working Time for Domestic Workers in International Law

2.4.1 Domestic Work and the Informal Economy

A central challenge in regulating for decent working conditions in domestic work is the prevalence of informality: these workers constitute a significant portion of the informal economy, characterized by 'de jure or de facto non-recognition' in national labor law (Teklè, 2010, p. 15).

There is not a universally accepted definition of the term, due to the great diversity of 'workers, enterprises and entrepreneurs with identifiable characteristics' in the informal economy (International Labour Organization, 2002, pp. 5–6). The informal economy includes 'all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements' (ibid.).

Informal work is particularly prevalent in the South, where a 'great part of the active populations has never performed work that corresponds to the industrial employment model around which "conventional" labour law protection is shaped' (Teklè, 2010, p. 13). The informal economy is

dominated by the 'most vulnerable and marginalized groups' in society due to discrimination on the bases of gender, age, ethnicity and disability (International Labour Organization, 2002, p. 8). Accordingly, more women than men work in the informal economy.

The aim of the Decent Work Agenda is to promote decent work for everyone. A core principle of the Agenda is that 'all those who work have rights at work' (International Labour Office, 1999, p. 3). The mandate of the ILO goes beyond the needs of workers in formal enterprises: the work of the Organization must also address 'workers beyond the formal labour market – with unregulated wage workers, the self-employed, and homeworker' (International Labour Office, 1999, pp. 3–4). The workers in the informal economy outnumber those in formal employment (International Labour Organization, 2002, pp. 5–6). In 2002, the Governing Body adopted a resolution concerning decent work and the informal economy to address the decent work deficit for these workers. The resolution concludes that informality is 'principally a governance issue':

> 'The growth of the informal economy can often be traced to inappropriate, ineffective, misguided or badly implemented macroeconomic and social policies, often developed without tripartite consultation; the lack of conducive legal and institutional frameworks; and the lack of good governance for proper and effective implementation of policies and laws' (International Labour Organization, 2002, p. 7).

In recent decades, the need to extend decent working conditions to the informal economy as gained recognition within the ILO. In June 2014, the 103rd Session of the International Labour Conference will discuss the 'facilitating transitions from the informal to the formal economy' with the aim to adopt a Recommendation on this subject (International Labour Conference, 2013, pp. 1–2).

2.4.2 Application of International Labor Standards on Working Time

Many international labor standards apply to domestic work. These workers enjoy formal protection of their fundamental principles and rights at work, e.g. freedom of association and the right to collective bargaining. They are also protected by standards on the rights of migrant workers (European Trade Union Confederation, 2005, p. 50). In general, domestic workers are covered by international standards unless the instrument explicitly excludes them (International Labour Conference, 2010, p. 16). The ILO has actively taken steps to ensure that domestic workers are not unintentionally excluded from the scope of labor standards, for example by adopting definitions of concepts that are wide enough to cover domestic workers (ibid.). Still, international protection of these workers has traditionally been weak, especially with regards to hours of work.

Several conventions on working time do not apply to domestic work. The Hours of Work (Industry) Convention, 1919 (No. 1) and Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), which set the length of

the standard working week to 48 hours, are not applicable to domestic workers (Article 1). Nor do the two conventions awarding workers in the industry as well as commerce and offices twenty-four consecutive hours of weekly rest apply to this group of workers (Article 2 of the Weekly Rest [Industry] Convention, 1921 [No. 14], Articles 2–3 of the Weekly Rest [Commerce and Offices] Convention, 1957 [No. 106]). In other instruments on working time, domestic workers are not explicitly excluded from the scope of the conventions, though many standards contain provisions that allow for the exclusion of categories of employees 'in respect of whose employment special problems of a substantial nature, relating to enforcement or to legislative or constitutional matters, arise' (Article 2 of the Holidays with Pay Convention [Revised], 1970 [No. 132]). When conventions allow for the exclusion of categories of workers from the scope of the instrument, such exclusions require consultation with trade unions and employers' organizations. Consequently, domestic workers are dependent on workers' organization to ensure that they are not excluded from the scope of labor instruments (European Trade Union Confederation, 2005, p. 50). In addition, the often informal character of domestic work leads to these workers being 'excluded de facto from formal regulations' (International Labour Conference, 2010, p. 11).

2.4.3 The Convention concerning Decent Work for Domestic Workers, 2011 (No. 189) and Recommendation (No. 201)

In 2011, the International Labour Conference adopted the Convention concerning Decent Work for Domestic Workers, 2011 (No. 189) and Recommendation, (No. 201) on the working conditions for domestic workers. The purpose of this instrument is to 'reaffirm the international protections to which domestic workers are already entitled' and establish new rights for these workers (International Labour Conference, 2010, p. 96). The convention was adopted to extend the labor protection awarded other categories of worker to include domestic workers. Exemption of domestic workers from labor regulation on working time is common practice and often motivated by the '"distinctive work pattern" and the "exceptional nature" of domestic work that is held to make it unsuitable for regulation' (International Labour Office, 2013a, p. 59). The convention creates a general obligation on state parties to ensure decent working conditions for domestic workers (Article 6). This includes, for example, the right to privacy for live-in workers. The state parties may 'exclude wholly or partly' from the scope of the convention categories of workers who are 'otherwise provided with at least equivalent protection' or workers 'in respect of which special problems of a substantial nature arise' (Article 2).

To preserve and protect the dimension of these workers' lives that is 'distinct from their engagement in waged labour', the Domestic Workers Convention, 2011 (No. 189), requires state parties to implement 'measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation,

periods of daily and weekly rest and paid annual leave' (Article 10). The call for equal treatment with respect to normal working hours is based on the fact that almost all countries have a limit on weekly working hours, usually between 40 and 48 hours (International Labour Office, 2013a, p. 60). The problem is therefore not a lack of legislation in this area, but the exemption of domestic workers from its scope (ibid.).

Another component of working time is the right to weekly rest. Article 10 calls for 24 consecutive hours of weekly rest for domestic workers (para. 2). This is equal to the rest period awarded other workers by the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106). Statistics show that '44.9 percent of all domestic workers, or 23.6 million worldwide, are not entitled to any weekly rest under national legislation' (International Labour Office, 2013a, p. 62). Weekly rest is seen as pivotal to 'preserve domestic workers' health and safety and enable them to spend time with their families' (ibid.).

Article 10 of the Domestic Workers Convention, 2011 (No. 189) also requires equal treatment of domestic workers in the area of annual paid leave. As discussed above, all employed persons are entitled to a minimum of three weeks of paid leave annually (the Holidays with Pay Convention [Revised], 1970 [No. 132]). Domestic workers are covered by the legislation on annual leave in many member states: almost 50 percent of all domestic workers enjoy the same entitlements to annual leave as other workers (International Labour Office, 2013a, p. 64). The Domestic Workers Convention calls for equal treatment of domestic workers in this area, to guarantee the overall well-being of these employees. The right to paid annual leave is especially significant for migrant workers with family in another country who 'depend on their paid holidays to be able to reunite with them' (ibid.). Live-in workers are also dependent on the right to annual leave. The right to paid annual leave is especially weak in Asia, where only 3 percent of domestic workers enjoy legal protection of this right (ibid., p. 65). Other workers are wholly dependent on the discretion of their employer.

The Domestic Workers Convention reaffirms protection offered by existing instruments and creates new standards of protection for these fundamental aspects of working time, which are crucial to address to achieve decent working time for domestic workers. The convention entered into force on September 5, 2013. The ratification process was spurred on by the '12 by 12' campaign, initiated by the International Trade Union Confederation in partnership with, among others, the International Domestic Worker Network, to achieve 12 ratifications of the convention in 2012.

Today, 14 countries have ratified the convention, a majority of these in South America. The Philippines, a major country of origin for migrant domestic workers, is the only Asian country that has ratified the instrument. Two European nations are parties to the Convention: Italy and Germany.

3 Domestic Work and Working Time Regulation in Thailand

The purpose of this chapter is to examine the fundamental characteristics of the labor law system in Thailand, focusing especially on working time legislation. This chapter also examines the characteristics of domestic work in Thailand and the applicability of national working time regulation to this type of work.

3.1 Fundamental Characteristics of the Labor Law System of Thailand

The Constitution of the Kingdom of Thailand is the fundamental instrument for governance and provides the basis for rule of law. It governs the rights and duties of the government as well as of the people. However, the Constitution has not always protected fundamental rights and freedoms. Frequent constitutional reforms have impaired its status as supreme guarantor of human rights (Yoshida, 2003, p. 354). The 1932 Constitution of the Democratic Kingdom of Thailand established parliamentary democracy as the form of government. Since its adoption, however, the country has been plagued by coup d'états. A large number of constitutions have been passed since 1932 – the most recent Constitution of 2007 is the eighteenth in order. Military dictators have repeatedly redrafted the constitution to assert their political power, often resulting in the effective repression of civil and political rights. Every change of government has led to 'the dissolution of trade unions, prohibition of industrial action and abolition of labour law' (ibid., p. 353).

The development of labor rights in Thailand has also been hampered by the country's socio-economic situation. Yoshida (2003, p. 353) points out how Thailand in the 1970s, like many low-income nations, adopted a system restricting 'fundamental human rights' and 'public participation in politics' in favor of economic development. By constraining workers' rights, the cost of labor could be reduced. This helped create a legal system with heavily restricted labor rights.

In the 1990s, the political climate was changing. By now, Thailand had transformed into a middle-income nation with a growing middle class demanding fundamental rights and democratic governance (Dressel, 2009, p. 297). In 1997, a new constitution was adopted. The 1997 People's Constitution has been described as a 'watershed event' in the constitutional history of Thailand, due to the extensive participation of the public in the drafting process (ibid., pp. 296–301). The redrafting of the Constitution was not prompted by a coup d'état. Rather, it was a conscious attempt of the government to move towards democratic governance (Yoshida, 2003, p. 353). The current constitution was adopted in 2007, prompted by the 2006 coup d'état by the Royal Thai Army to oust publically elected Prime

Minister Thaksin Shinawatra (Dressel, 2009, p. 297). Although the process of drafting the new constitution involved little participation by the public, the rights and liberties established by the 1997 Constitution are largely intact (ibid., p. 312).

Fundamental labor rights are enshrined in the Constitution as individual freedoms. Section 63 protects the freedom of peaceful assembly. Limitations are set up in the second paragraph, which stipulates that this liberty may be restricted by 'virtue of law specifically enacted' to maintain public order or during a state of emergency. Section 64 safeguards freedom of association, which may only be restricted by legislation to protect certain fundamental aims such as 'public order or good morals'.

Before labor-related rights and freedoms were protected by the Constitution, labor relations were regulated by the Civil and Commercial Code, last amended in 2008 (No.18, B.E. 2551) (Yoshida, 2003, p. 352). The first labor-related provisions were introduced in 1929 when Book III on contract law was adopted. Sections 575–586 under Title VI on the hire of services are of importance for labor-related issues. These Sections govern, for example, the right to remuneration. The applicability of this Code is established by Section 14 of Labour Protection Act (LPA) (1998), the fundamental statute on labor protection in the Thai legal system (International Labour Office, 2013c, p. 4). The LPA regulates terms and conditions of work. It was passed to align national labor norms with international labor standards and 'improve the quality of labor', which had suffered under Thailand's restrictive policies during its phase of economic growth (ibid., p. 357.). Wages and working hours, as well as occupational safety and other basic labor rights, are regulated in the LPA. The Minister of Labour and Social Welfare may alter the provisions of the LPA by issuing of Ministerial Regulations (Section 6).

Another statute of fundamental importance is the Labour Relations Act, B.E. 2518 (LRA) (1975). This Act regulates the right of workers and employers to establish associations. A trade union shall promote understanding between workers and their employer, and protect the interests of employees with reference to working conditions (Section 86). According to Chapter VII, a trade union may be set up after an application has been submitted by ten employees of Thai nationality who share same employer or line of work (Sections 88–89). Membership in a union can be sought by any other employee of the same employer or in the same trade, except supervisors (Section 95). Thai nationality is not required for union membership, but migrant workers are not eligible to be part of the leadership of a workers' organization (Section 100). This restriction on the freedom of association of migrant workers is not in compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) (Human Rights Watch, 2010, p. 80).

Trade unions have the power to negotiate and 'enter into agreements with the employer or employers' association' (Section 98). Collective bargaining on enterprise level is the dominant form of collective bargaining in Thailand (Yoon, 2009, p.14). As a result, the effect of collective agreements is limited to the individual firms. In Thailand, the percentage of workers covered by collective agreements is lower than the percentage of organized workers. In

2010, 3.6 percent of workers were union members, according to the ILOSTAT database.

Labor disputes are handled by the Labour Court, whose activities are regulated by the Labour Court Establishment and Procedures Act, B.E. 2522 (1979). The first national Labour Court was established in 1980. The Court consists of professional judges as well as lay judges who represent the employers and the employees. Disputes commonly concern 'unfair dismissal, severance pay and claims for other benefits'. To file a complaint with the Labour Court is a popular means to resolve disputes for employees. Due to the low rate of unionization, trade unions are generally unable to effectively resolve labor disputes for their members (Yoshida, 2003, p. 360–361).

In addition to national legislation, international law influences the standards of the Thai labor system. Thailand is one of twenty-nine founder members of the International Labour Organization. However, the country has ratified a limited number of conventions, only fifteen in total. Thailand has ratified five of the eight core conventions on fundamental principles and rights at work. Neither the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), nor the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) is ratified by the country. Thailand has ratified one – the Employment Policy Convention, 1964 (No. 122) – of the four prioritized governance conventions on subjects such as labor inspection and tripartite consultation, identified by the ILO as key instruments in a functioning labor standard system.

Thailand has ratified nine of the 177 technical conventions adopted by the ILO. Eight of these are in force. Of the numerous conventions on working time, Thailand has ratified the Weekly Rest (Industry) Convention, 1921 (No. 14). Thailand has not ratified the newly adopted Convention concerning Decent Work for Domestic Workers, 2011 (No. 189) and Recommendation (No. 201). There are currently no indications that the government will ratify this convention.

Due to the limited number of ratifications, Thailand is bound by few international labor standards. As explained above, however, any member of the ILO is bound by an obligation to 'promote and realize' the core principles laid out in Article 2 of the ILO Declaration on Fundamental Principles and Rights at Work from 1998, namely the 'freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in respect of employment and occupation'.

3.2 Characteristics of Domestic Work

3.2.1 Prevalence of Domestic Work and Composition of the Workforce

More than a quarter of a million domestic workers are estimated to be employed in Thailand (International Labour Office, 2013c, p. 1). According

to the World Bank, the total labor force in the country is 39 million. Due to the rapid economic growth in recent decades, the middle class in Thailand is rapidly expanding. Women have gained access to further education as well as formal work. Today, labor force participation of women in Thailand is 60 percent (Yoshida, 2003, p. 350). Domestic workers are often employed to alleviate the burden of care responsibilities in a society with limited public welfare. They are hired to perform a multitude of tasks, including cleaning, cooking, caring for children and elderly, as well as any other task requested by their employer. Caretakers for children and elders are increasingly in demand Thai society (Boonitand, 2010, p. 3).

A study by Chulalongkorn University's Social Research Institute from 2008 indicates that women dominate the workforce in domestic work – about 84 percent of domestic workers are female (Boonitand, 2010, pp. 8–9). As Thai women reject employment in the domestic service sector in favor of industrial jobs, migrant workers from neighboring countries are employed as domestic workers (Foundation for Labour and Employment Promotion 2012, p. 4). According to the Foundation for Labour and Employment Promotion (HomeNet Thailand), 90 percent of domestic workers in Thailand are migrant workers, predominantly from Burma, Laos and Cambodia. Though there are regular channels for labor migration, a majority of these workers have irregular status (Foundation for Labour and Employment Promotion 2012, p. 4).

3.2.2 The Employment Relationship

Domestic workers have long lacked recognition as employees by the authorities and in society at large. Until recently, domestic work was defined as informal work by the Ministry of Labour (Boonitand, 2010, p. 4). Workers in the informal economy are excluded from the scope of 'existing workplace laws, regulations and protections', according to the definition by the National Statistics Office (Kelly et al., 2010, pp. 376-377). Due to changes in Thailand's national labor legislation, certain conditions of work for domestic workers are now regulated by law.

The view on domestic work as something other than work prevails despite the recent legislative changes. As a result, the rights and duties of the two parties to the employment relationship are seldom regulated in a formal contract. Instead, the employment relationship is often casual, based on 'kinship or personal or social relations': domestic workers often find work through recommendations of friends or relatives (Kelly et al., pp. 376-377). Domestic workers may also find work via private agencies. A contractual agreement that specifies, *inter alia*, specific tasks, salary, and annual leave may be established between the agency, the employer and the employee (Boontinand, 2010, p. 11). A contract may also be established directly between worker and employer.

Frequently, however, no contractual agreement exists between the parties. According to a study by the Federation of Trade Unions Burma on the working conditions of Burmese migrant workers in Bangkok, only two of the 409 interviewed employees had a mutual agreement with their employer on 'tasks, wages, and working conditions' (2013, p. 14). In both

cases, the agreement was verbal. According to Section 5 of the LPA, an employment contract may be concluded orally or in writing. Domestic workers report that discussions with their employers mainly focus on their tasks and wages, rather than conditions such as working time (Federation of Trade Unions in Burma, 2013, p. 15).

Domestic workers are categorized as either live-in or live-out workers. Live-in workers usually receive food and accommodation from their employer. There are various reasons for a live-in arrangement:

> 'These workers generally do not hail from the neighboring town. They prefer a live-in arrangement because they do not have an alternative home in the vicinity. Sometimes they want a live-in arrangement to save the cost of housing. At other times they must accept a live-in arrangement because that is what the employers demand. … In the case of undocumented migrants, a live-in arrangement is also an asylum of some sorts, albeit a fragile one, from the immigration authorities' (Mundlak, 2005, p. 141).

According to the survey on working conditions of Burmese migrant domestic workers, over 90 percent of were live-in workers (Federation of Trade Unions in Burma, 2013, p. 15). A majority of these workers cited free food and accommodation as the reason for this arrangement (ibid., p. 9).

In contrast to live-in workers, live-out workers are not living with their employer. The living arrangement does not affect the status of the worker as employee, as defined in Section 5 of the LPA as 'a person who is employed by an employer for remuneration, regardless of the title he is given'. Regardless of living arrangement, working conditions in domestic work must adhere to the standards established by national labor legislation.

3.3 The National Regulation of Working Time for Domestic Work

The Labour Protection Act, B.E. 2541 (1998) (LPA) is the central statute on working conditions. It was implemented with the aim to align national labor norms with the standards set by ratified ILO conventions (Yoshida, 2003, p. 358). The 16 chapters of the LPA regulate, *inter alia*, termination of employment, wages, and occupational safety and health. Chapter 2 (Employment of Labour in General) of the Act contains provisions on hours of work, holidays, overtime and rest periods.

Section 4 of the LPA stipulates that any category of employer may be completely or partially excluded from the scope of application of the LPA through a Ministerial Regulation. Alongside the adoption of the LPA in 1998, Ministerial Regulation, B.E. 2541 was issued to render many of the provisions of the new Act inapplicable to 'employers employing workers to perform domestic work which does not involve business operations'. Domestic workers had long suffered from insufficient protection of their working conditions: they were neither explicitly excluded nor included in the wording of national labor legislation and domestic work has traditionally been regarded as something other than work. The 1998 Ministerial Regulation constituted an explicit exclusion of domestic workers from the

scope of the provisions on working time in Chapter 2 of the LPA. Limitations to daily and weekly working hours were not applicable to domestic work (Section 23), nor were these workers entitled to weekly and annual periods of rest by law (Sections 28–30).

The protection of decent working conditions in domestic work has recently improved. In 2012, the government introduced a new Ministerial Regulation No. 14, B.E. 2555, under the Labour Protection Act. This Regulation was issued to replace the 1998 Ministerial Regulation, as the protection awarded domestic workers under this Regulation did 'not respond to the changed social and economic conditions' in present day Thailand (Royal Thai Government Gazette, 2012).

As a result of the 2012 Ministerial Regulation, Sections 28–30 of the LPA are now applicable to domestic work. The right to weekly rest and annual leave for domestic workers is now protected by law.

Paragraph 1 of Section 28 stipulates that an employee shall have 'at least one day off per week'. The interval between each weekly holiday cannot exceed six days. Under some circumstances, weekly holidays may be accumulated and taken at a later time. Accumulated holidays must be taken within a period of four weeks.

Annual leave is awarded the employee as traditional and annual holidays. Employees are granted at least thirteen traditional holidays annually, which the employer 'shall consider' to distribute in accordance with 'government, religious or local customary holidays' (Section 29, para. 2). If this is not possible, due to the nature of the work or limitations set out in a Ministerial Regulation for example, the worker shall receive holiday pay at the rate prescribed by law or another day off in substitute.

In addition to traditional holidays, employees who fulfil certain criteria are entitled to annual holidays: workers who have been employed for twelve consecutive months are entitled to at least six weekdays of holiday (Section 30). Annual holidays can be accumulated and postponed.

Although the protection and regulation of decent working time for domestic workers have improved in recent years, this group of workers is still excluded from the scope of central provisions on working time.

There is no maximum limit on daily or weekly working hours for domestic workers. For other categories of employees, this is regulated in Section 23 of the LPA. The general rule on working hours stipulates that 'the number of working hours in one day shall not exceed eight and the total number of working hours in one week shall not exceed 48 hours'. If the work 'may be harmful to the health and safety' of the worker, daily hours of work 'shall not exceed seven' and weekly hours of work shall not exceed 42. In addition, this Section requires employers to inform the worker of 'starting and finishing times for each working day'. If this cannot be specified because of 'the nature or type of work', the two parties must agree on a fixed number of working hours per day and week that does not exceed eight and 48 hours, respectively.

Domestic workers are excluded from the scope of provisions on overtime and holiday working hours. Section 24 prohibits an employer from 'requiring an employee to work overtime on a normal working day', except when prior consent of the employee has been obtained (para. 1). However,

such requirements are not unlawful if there is a risk that 'damage could be caused' or the work is of 'an urgent nature' as prescribed by Ministerial Regulations (para. 2). Under these circumstances, an employee is required to work overtime 'as necessary'. An employer cannot require an employee to work on a holiday, as stipulated by Section 25. This Section contains an exception to this rule, if 'damage could be caused or the work is of 'an urgent nature' (para. 1). According to paragraph 2 of Section 25, certain categories of employees are excluded from the scope of the general prohibition on holiday work. These include those employed in the hospitality industry and medical staff. Ministerial Regulations may prescribe further limitations to the application of the prohibition of holiday work. In addition, an employee who has given prior consent to work on a holiday can be required to do so if necessary in the 'interests of production, distribution or the provision of a service' (para. 3). Ministerial Regulation No. 3, B.E. 2541, under the Labour Protection Act stipulates that the number of hours of overtime referred to in the first paragraph of Section 24 and holiday working hours referred to in the second and third paragraphs of Section 25, shall not exceed 36 hours 'in any one week'.

The right to daily rest periods in domestic work is not protected by the LPA. Other employers are required by Section 27 to allow for rest periods during the working day. An employee must be allowed at least one hour of rest after five consecutive hours of work. The two parties may agree in advance to limit or delay the period of rest, as long as it is equal to or longer than one hour in total per working day. Such agreement between employer and employee is only valid if it is 'beneficial to the employee', according to paragraph 2. Paragraph 3 stipulates that periods of rest are not to be viewed as working time. In similarity with other provisions on working time, the limitations in paragraphs 1 and 4 of Section 27 can be evaded if the employee consents to a different solution, or in case of emergency.

Provisions in Chapter 2 of the LPA regulate central parameters of decent working time, such as daily and weekly hours of work, weekly rest, and the right to annual leave. These were adopted to align national legislation with international standards on working time. As domestic workers are excluded from the scope of certain provisions on working time, the right to decent working time for this group of workers is not protected to the same extent as other employees'. Case law to complement statutory norms on working time in domestic work is non-existent: complaints regarding violations of working time limitations for domestic workers have yet to reach the competent authorities (interview with Poonsap Tulaphan, manager at HomeNet, 17 March 2014).

3.4 The Role of Trade Unions and Collective Bargaining in the Adoption of Working Time Norms

The right to organize is fundamental to the achievement of decent work. Trade unions also play a pivotal role in the establishment and enforcement of labor rights. Trade unions in developing nations are often important

actors in the struggle for democracy as well as for norms on working time and wages (Kelly et al., 2010, p. 379).

The rate of unionization in Thailand is low. According to statistics from 2010, 3.6 percent of workers are organized (ILOSTAT database). This number is even lower in enterprises with fewer than 10 employees, where only 0.2 percent is union members. In companies where the number of employees ranged from 10 to 99, circa 2 percent of workers reported that they belonged to a trade union. Large establishments show the highest numbers of organized worker at 14 percent (Pholphirul, 2007, p. 17). Unionization was prohibited by law until the mid-1970s. In addition to the opposition of workers' organization by the government, employers have opposed the establishment of trade unions. Workers who have sought to organize have often experienced 'harassment, threats of dismissal, arrest, and physical violence' (American Center for International Labor Solidarity, 2007, p. 16). Around 10,000 union promoters were dismissed by their employer between 1975 and 1993 (ibid., p. 16). A climate of hostility towards trade unions is a strong inhibitor of the unionization of workers.

In Thailand, collective bargaining is of limited importance for the protection of decent working conditions (Pholphirul, 2007, p. 17). Bargaining predominantly takes place on enterprise level, where the effect of collective agreements is limited to the individual firms. Due to low numbers of organized workers and weak trade unions, the power imbalance between employees and employer remains. In these circumstances, the bargaining power of the workers is reduced and may lead to an agreement that heavily favors the interests of the employer (Yoshida, 2003, p. 357). The weakness of the Thai trade unions in general is detrimental for the progress towards decent working conditions. According to one estimate, 40 percent of factories do not pay their employees the fixed minimum wage (Kelly et al., 2010, p. 379).

Although the general rate of unionization in Thailand is low, it is non-existent among domestic workers. Nor is this work regulated in collective agreements. For these workers, the right to unite was prohibited by Executive Order No. 54, which amended the Labor Relations Act to restrict freedom of association for certain groups of workers (American Center for International Labor Solidarity, 2007, p. 8). In addition, many domestic workers are migrant workers whose right to organize is clearly limited in Thai law, as they do not have the right to establish unions.

There are many obstacles to the organization of employees in domestic work. However, organizations such as HomeNet Thailand are working with domestic workers to educate them on their rights as employees (interview with Poonsap Tulaphan, manager at HomeNet, 17 March 2014). They are also pushing for legislative changes that will offer greater protection for domestic workers' rights. In their view, one of the most fundamental steps towards the improvement of working conditions in domestic work is the right to organize.

3.5 The Enforcement of Working Time Norms

To achieve decent work for all, legal provisions on working conditions must be applied in practice. Labor inspection is central to the practical enforcement of working time standards (Yoshida, 2003, p. 360). The fundamental role of labor inspection is established in two international conventions: the Labour Inspection Convention 1947 (No. 81) and the Labour Inspection (Agriculture) Convention 1969 (No. 129), which require state parties to 'maintain a system of labour inspection' in industrial workplaces and agriculture (Article 1 and Article 3, respectively). These two governance conventions have been given special priority by the ILO. Neither of the two instruments has been ratified by Thailand.

Labor inspection in Thailand is executed by the Department of Labour Protection and Welfare (DLPW) under the Ministry of Labour. Acts of central importance for labor inspection are the Labour Relations Act, Labour Protection Act, and the Occupational Safety, Health and Environment Act, BE 2554 (2011).

The central task of labor inspectors is to oversee 'compliance with general working conditions, occupation safety and health, labour welfare and labour relations' (International Labour Organization, 2013). Labor inspectors shall visit establishments on a regular basis. Visits may also be initiated by request or complaint (ibid.). If the employer is in breach of legislation on working conditions, inspectors can issue a written order 'requiring the employer to improve the working environment' (Section 104 of the LPA). Where the employer has failed to comply with provisions on entitlements to any sum of money under the LPA, the labor inspector may issue an 'order requiring the employer to pay that money to the employee' (Section 124 of the LPA). Employees have the right to submit a complaint on such matters to the labor inspector under Section 123 of the LPA.

Yoshida (2003, p. 360) notes that labor inspection is often neglected in developing nations. This is also true in Thailand, despite the establishment of institutions to carry out and monitor labor inspection on a national and regional level. Adequate inspection is hampered by insufficient numbers of inspectors: 'each labour inspector has to review about 1,000 establishments a year' (ibid., p. 360). As a result, de facto working conditions may differ greatly from what is stipulated by law.

Working conditions in domestic work are particularly difficult to monitor, due to the fact that the work is performed in the private household of the employer. The effects of the new Ministerial Regulation on the working conditions in domestic work may not be visible yet. However, a study from 2013 showed that 82 percent of the domestic workers interviewed worked seven days per week, in violation of Section 28 of the LPA (Federation of Trade Unions in Burma, 2013, p. 11). While national legislation does not stipulate a limitation on daily working hours for domestic workers, the same study showed that 69 percent of the employees worked between 12 and 14.5 hours every day. For 20 percent of the interviewees, the working day extended beyond 15 hours (ibid., p. 20).

While 99 percent of the workers reported that they were allowed to rest during the working day, 94 percent said that the length of the rest period depended on the employers' situation and whether the employee had finished her work (ibid., p. 13). These numbers indicate that working conditions for domestic workers deviate strongly from working time norms in the national legislation.

4 Domestic Work and Working Time Regulation in Sweden

This chapter explores the fundamental characteristics of the Swedish labor law system, especially focusing on working time regulation. This chapter also examines the characteristics of domestic workers in Sweden and the applicability of working time regulation on domestic work.

4.1 Fundamental Characteristics of the Swedish Labor Law System

Sources of law in the Swedish labor system are EU law and international conventions, constitutional provisions, national labor legislation, and collective agreements. The jurisprudence of the Labour Court is also a source of law (Källström and Malmberg, 2009, p. 58).

Membership in the European Union has a fundamental effect on the domestic legal system of States due to the supranational character of EU law (Davies, 2012, p. 3). A central principle of the Union is the primacy of EU law over national law, as established by the European Court of Justice in Case 6/64 *Costa v Enel* [1964] ECR 585. Another fundamental principle of the Union acquis is the doctrine of direct effect, according to which EU legislation under certain circumstances 'can be applied by the national courts without any need for the national government to transpose it into the legal system' (Davies, 2012, p. 3). These central principles create a hierarchy between national and EU law that means that institutions of the Union lay down the legal framework for the national labor market (Chalmers et al., 2010, p. 187).

Article 3 of the Treaty on the European Union lists the central objectives of the Union. These include 'full employment and social progress' as well as the promotion of 'social justice and protection [and] equality between women and men'. While Blanpain (2012, pp. 147–148) argues that these objectives must be recognized as 'subordinate to the overall economic-monetary goals of the EU', the Treaty does not differentiate between these objectives of different nature. Rather, Article 3.3 of the TEU stipulates that the Union shall establish a 'social market economy'.

This is further emphasized in Article 6 of the TEU, which stipulates that the Union 'recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights [of the European Union (12 December 2007) (2007/C 303/01)] … which shall have the same legal value as the Treaties'. Prior to the Lisbon Treaty, the Treaty of the European Union did not include 'legally enforceable fundamental social rights' (Blanpain, 2012, p. 149). Today, the Charter has legal effect and can be 'enforced before the European Court of Justice' (Barnard, 2012, p. 28). It contains civil and political rights, as well as economic and social rights. Article 31 of the Charter stipulates that every worker 'has the right to limitation of maximum

working hours, to daily and weekly rest periods and to an annual period of paid leave'.

Labor law is categorized as social policy. The EU and its member states have a shared competence in this area. The 'principal basis for the developing EU labor law' is established by Article 151 of the TEU (Herzfeld Olsson, 2011, p. 37*)*. The Article outlines the objectives of the Union within this field and recalls the importance of the social rights set out in European Charter and in the Community Charter of the Fundamental Social Rights of Workers. These objectives include, *inter alia*, improved living and working conditions and proper social protection. Article 153 outlines the fields in which the Union 'shall support and complement the activities of the Member states' through the adoption of measures that encourage international cooperation and exchange of information and knowledge. The Union may also adopt directives containing 'minimum requirements for gradual implementation' in the specific fields (para. 2.2).

The Union objectives are also pursued through the adoption of directives that require member states to 'take steps to ensure that provisions they outline are given effect in national law' (Davies, 2012, pp. 3–4). A central directive in the field of working time is Directive 2003/88/EC of November 2003 concerning certain aspects of the organisation of working time. The Working Time Directive lays down minimum standards for the organization of working time with reference to periods of daily and weekly rest, as well as annual leave (Blanpain, 2012, p. 670). Article 3 of the Directive stipulates that 'every worker is entitled to a minimum daily rest period of 11 consecutive hours per every 24-hour period'. Workers shall also be entitled to rest breaks during the working day, provided that it exceeds six hours. The duration and terms on which breaks are granted shall be regulated by collective agreements or national legislation (Article 4). In addition to the 11 hours of daily rest, workers are entitled to 24 consecutive hours of rest per week (Article 5). Derogations from Articles 3–5 may be made by means of collective agreements at the national, regional or a lower level (Blanpain, 2012, p. 686). Average weekly working time may not exceed 48 hours, including overtime (Article 6). Workers are granted four weeks of paid annual leave, which 'may not be replaced by an allowance' (Article 7). According to the jurisprudence of the European Court of Justice (ECJ), the right of every worker to paid annual leave is a 'particularly important principle of Community social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Directive 93/104' (C-173/99 *R* v. *Secretary of State for Trade and Industry, ex parte BECTU* [2001] ECR I-4881, para. 43). The ECJ has stressed that a 'worker must normally be entitled to actual rest, with a view to ensuring effective protection of his health and safety' (ibid., para. 44). In recent case law, the Court has ruled that paid annual leave accrues for employees on sick leave and that annual leave may be taken during this period or carried over to the following year (C-520/06 *Stringer* v. *Revenue and Customs Commissioner* [2009] ECR I-179).

EU legislation constitutes the legal framework for the national labor market. In contrast, national labor law regulates in detail the 'relationships

between workers, employers and trade unions' (Davies, 2012, pp. 3–4). The Swedish Constitution consists of four fundamental laws. Chapter 2 of the 1974 Instrument of Government contains provisions for the protection of fundamental labor rights, such as freedom of association and the right to strike. Section 1(5) guarantees everyone the 'freedom to associate with others for public or private purposes'. Section 14 stipulates that a 'trade union or an employer or employers' association shall be entitled to take industrial action unless otherwise provided in an act of law or under an agreement'.

Swedish labor legislation acknowledges the naturally weaker position of an employee in relation to their employer, and has the character of protective legislation (Sigeman, 2010, p. 13). The 1982:80 Employment Protection Act is a central piece of legislation of the Swedish labor system, as it provides detailed regulation the conditions for termination of employment contracts. The purpose of the Act is to protect employees against arbitrary or unjustified dismissals. Other laws of importance are the 1977:480 Annual Leave Act and the 1982:673 Working Hours Act, which set minimum standards for annual leave and working time.

A central characteristic of the Swedish labor market model is the autonomy of the workers' and employers' organizations. This autonomy is primarily exercised through collective bargaining. The 1938 *Saltsjöbaden* Agreement between the Swedish Trade Union Confederation and the Swedish Employers Association established the principle that labor rules and regulations are negotiated by workers and employers, and that collective bargaining shall be conducted without the involvement of the government (Sigeman, 2010, p. 18). In contrast to many countries in Europe, Sweden still lacks legislation on minimum wage. Instead, this is set by collective agreements for different sectors of the labor market. Collective agreements regulate the relationship between employer and worker on different levels; the national level, within a certain industry, and on the local level between a specific employer and the organized employees (Sigeman, 2010, p. 76). The provisions in many statutes are of semi-mandatory character and may be circumvented by collective agreements.

The 1976:580 Employment (Co-Determination in the Workplace) Act provides detailed regulation on the freedom of association (Sections 7–9) and the right collective bargaining (Section 10–17). According to Section 23 of the Employment (Co-Determination in the Workplace) Act, collective agreements are agreements 'in respect of conditions of employment or otherwise about the relationship between employers and employees'. Collective agreements regulate, *inter alia*, wages, working time and other conditions of work (Sigeman, 2010, p. 81).

The Swedish Labour Court is a tripartite tribunal where representatives of workers' and employers' organizations, as well as regular judges, engage in the judicative activities. The procedure at the court is regulated by the 1974:371 Labour Disputes (Judicial Procedure) Act. National courts are bound by the principle of *interprétation conforme*, which requires the courts to interpret national legislation consistently with the meaning and wording of the EU directive, to achieve the aim of the act (Bruun and Malmberg, 2005, p. 32).

As a member of the ILO, Sweden is also bound by international labor standards. The influence of international labor standards on European labor law is not insignificant, as 'policies, laws and collective agreements' on the national as well as the European level have been inspired by ILO instruments (Herzfeld Olsson, 2011, p. 33*)*. Although only States can be members of the ILO (ILO Constitution Art 1.2), the European Union has obtained observer status in the both the Governing Body and the International Labour Conference *(*ibid., p. 31–32). The eight core conventions of the ILO have been ratified by all EU member states. Ratification of all up-to-date conventions is encouraged by the European Commission and the European Parliament (ibid., p. 27).

Sweden has the eight fundamental conventions and four governance conventions. Sweden has also ratified nearly half of the 177 technical conventions. Important instruments ratified by Sweden for the regulation of working time are the Forty-Hour Week Convention, 1935 (No. 47), the Holidays with Pay Convention (Revised), 1970 (No. 132) and the Part-Time Work Convention, 1994 (No. 175). Sweden has not ratified Convention No. 189 on Domestic Workers. The Council of Ministers of the EU has authorized member states to ratify the convention. According to the Commissioner for Employment, Social Affairs and Inclusion, certain provisions of the Convention on Domestic Workers is already covered by EU law that, at times, is 'more protective than the Convention'. Still, States are encouraged to implement the convention 'as soon as possible' since it is 'more precise than EU law on the coverage of domestic workers by legislation and in other particular aspects of domestic work' (European Commission, 2014). The Government Offices of Sweden is currently analyzing the content of the convention in relation to domestic law. The result of this analysis will be relayed to the Swedish Parliament for further consideration at the end of 2014 (Riksdagen, 2013).

4.2 General Characteristics of Domestic Work in Sweden

4.2.1 Prevalence of Domestic Work and Composition of the Workforce

The exact number of people employed in domestic work in Sweden is difficult to establish. Statistics Sweden, the government agency responsible for producing statistics, does not differentiate between people employed in private households and those employed to clean for example offices or school buildings (Gavanas and Calleman, 2013, p. 8). One way to estimate the prevalence of domestic work is to look at the number of people using this type of service. A person who hires someone to perform domestic services such as cleaning, laundry, or child minding is entitled to a tax deduction called RUT. In 2010, circa 326 000 people were entitled to this deduction (ibid.). These services were performed by 13 516 companies (ibid.). According to estimates by Almega – an employer's association that organizes many of the employers in this sector – circa 12 000 people are

employed by their members (ibid.). This number does not account for employees of unorganized employers. Calleman (2006, p. 10) underlines how difficult it is to calculate the pervasiveness of domestic work, though these estimates indicate that the numbers are not insignificant and appears to be increasing, as a result of welfare reforms aimed at cutting public spending in the field of healthcare and eldercare. Users are often persons over 65 years of age and families with small children. Individuals who qualify for the RUT tax deduction are almost exclusively members of high-income households (Gavanas and Calleman, 2013, p. 8). The most common task performed by domestic workers is cleaning. In 2010, 93 percent of private households using the special tax deduction for domestic work requested this service. In contrast, only one percent of households employed a domestic worker for child care (ibid, p. 7).

No official figures exist on the composition of the workforce in domestic labor with regards to the gender, ethnicity, or age of the employees (Calleman, 2006, p. 13). Historically, this type of work has been performed by young women from non-metropolitan areas (Gavanas and Calleman, 2013, p. 9). When women first entered the labor market, domestic work was the only formal employment available for women. When women were allowed to pursue other careers, domestic work quickly became a low-status job. The poor conditions of work in this sector led to a shortage of workers. As Swedish women abandoned paid domestic work, foreign-born women came to dominate the workforce (ibid.). During the Second World War, female refugees were recruited as domestic workers (ibid., pp. 9–10). After the war, workers from neighboring Nordic nations as well as other countries could work as domestic workers in Sweden without work permit until 1972 (Calleman, 2007, p. 46). This was required for non-Nordic citizens in other occupations.

Today, migrant labor is seen as a 'primary solution to the labor shortages of "ageing Europe"' by EU and Swedish policymakers (Gavanas, 2010, p. 23). The numbers of migrant workers in domestic work are increasing: a majority of the employees in this sector is foreign-born and female (Gavanas, 2013, p. 13). In Stockholm, foreign-born workers account for 80 percent of the workforce (Calleman, 2011, p. 131). Some home-services companies cater to their customers' preferences on the gender and ethnicity of the domestic worker (Gavanas, 2013, p. 93). Foreign-born women are particularly popular in care work (ibid., p. 93). The free movement of EU-citizens within the Union and generous rules for migrant workers allow home-services companies to recruit from abroad. In addition, migrant workers in irregular situations are frequently employed in this sector.

4.2.2 The Employment Relationship in Domestic Work

Domestic workers are commonly employed by companies to work in private households. This distinguishes Sweden from the rest of the world, where the contract of employment is usually established between the domestic worker and the person whose house she is cleaning or children she is caring for (Gavanas and Calleman, 2013, p. 13). The special tax reduction for home

services encourages this arrangement and is not applicable to employment relationships. Home-services companies accounted for circa 60 percent of companies in the domestic-service sector in 2010 (ibid.).

A contractual agreement may also be established between the domestic worker and a member of the household. If the contract is concluded by these actors, the domestic worker is acting either as self-employed or as an employee of the household (Calleman, 2006, p. 14). The distinction between employee status and self-employed is of central importance in Swedish labor law, since protective labor legislation is only applicable to employment relationships (Källström and Malmberg, 2009, p. 24). The definition of the nature of the relationship is dependent on the content of the contractual agreement rather than how it is defined by the parties, as established by the Labour Court in AD 1979 nr 155. According to the Labour Court, the evaluation of the employment status shall take into account all objective factors that point to either a contract of employment or a contract of services (ibid., p. 27). This principle was originally formulated by the Swedish Supreme Court in NJA 1949 s. 768. A similar approach is taken by the European Court of Justice (Källström and Malmberg, 2009 p. 27). A factor indicative of a contract of employment is an obligation of the party to personally perform the work (*personlig arbetsskyldighet).* Another indication of employment is the subordination of the worker, i.e. the competence of the employer to direct and allocate the work, see for example AD 2005 nr 16. These two factors are core elements of the employment relationship (Källström and Malmberg, 2009 p. 27). If the employer provides the tools and equipment necessary for the job, this could also indicate that the parties are bound by an employment relationship (AD 1984 nr 110). Payments of a set amount on a regular basis, e.g. weekly or monthly, also suggest the existence of an employment relationship (AD 2005 nr 16). These are some of the factors that define the nature of the contractual relationship between two parties.

To encourage female entrepreneurship is one reason behind the special tax deduction for domestic services introduced in 2007 to increase the use of these services by private households (Blomberg et al., 2010, p. 31). Hiring someone to take care of household tasks would allow female entrepreneurs to combine family life and work more easily (Strömberg and Wennberg, 2010, p. 167). It would also stimulate female entrepreneurship in the domestic service sector – an aim of the action plan adopted by the Swedish government to promote gender equality (Blomberg et al., 2010, p. 31–32). In 2010, 40 percent of businesses in the domestic service sector were estimated to be self-employed (Gavanas and Calleman, 2013, p. 13).

The introduction of measures to increase female entrepreneurship in this sector was also an attempt to formalize domestic work, which has frequently been performed outside the formal labor market. Domestic workers have traditionally been employed without a formal contact and outside the control of the authorities: the income from the work is unreported to evade taxes.

Despite these measures, informal work has not been replaced by formal work. Instead, these economies coexist and a worker may operate in both 'simultaneously or on and off' (Gavanas, 2010, p. 29). According to one study, the tough competition between companies in this sector affects the

conditions of employment. Wages are low and full-time employment is rare (Kvist, 2013, pp. 35–36). To make ends meet, employees often work for several companies or outside their *formal* employment, sometimes in the same households that they serve as employees of registered companies (ibid.). Also:

> 'Formal and informal aspects of the domestic service sector intersperse as workers are hired informally by formally registered companies. Several interviewees told me that a cleaning company may charge a client for a certain amount of hours' cleaning but in fact the work is being done in much less time by an (undocumented) (migrant) worker who gets paid off the books (Gavanas, 2010, p. 27).

This illustrates how the formal and informal sectors co-exist, although employment and working conditions in domestic work is formally covered by existing legislation.

4.3 The National Regulation of Working Time

4.3.1 Employment in Home-Services Companies

Working time for employees in home-services companies is regulated by general labor law. Central norms on working time are established by the 1982:673 Working Hours Act. This law contains provisions on weekly working hours and the right to daily rests. As established by Section 3, the Working Hours Act is semi-mandatory. The rules of collective agreements may be imposed on employees who are not union members (Section 3, para. 3).

Swedish labor legislation is influenced by EU norms on working time. The implementation of EU directive 2003/88/EC concerning certain aspects of the organisation of working time led to changes in the Working Hours Act, for example in regards to the semi-mandatory character of the law, which allows for trade unions and employers' organizations to establish other working time norms in collective agreements (Nyström, 2011, p. 344). Norms set by collective agreements must be in compliance with the provisions in the Working Time Directive. The implementation of the Directive also necessitated the adoption of Section 10 (b) of the Working Hours Act, which stipulates that the average total working time for each seven-day period, calculated over a four-month period, cannot exceed 48 hours.

The Working Hours Act is applicable to 'all activities in which an employee performs work on behalf of an employer', according to Section 1. Certain restrictions on the scope of the law are stipulated in Section 2. Another important piece of legislation regulating working time is the 1977:480 Annual Leave Act, which specifies the general rules on the right to paid and unpaid annual leave. The provisions of this Act are also of semi-mandatory character. In contrast to the Working Hours Act, the applicability

of the Annual Leave Act is unrestricted: The provisions of the Act apply to all employees in the private and public sectors, regardless of occupation and type of employment (Björknäs, H. Semesterlagen 1 §, lagkommentar not 1, 1 April 2008, Karnov Internet).

The Working Hours Act does not establish a limit on daily working hours. It does, however, stipulate that workers shall have a daily rest period of at least 'eleven hours consecutive hours of free time for every period of twenty-four hours' (Section 13). Special circumstances allow for temporary deviations from this rule (para. 1). This provision is mandatory and cannot be circumvented by collective agreements. The Act also stipulates certain restrictions on daily working hours in terms of rest intervals and breaks that the employee is entitled to. *Rest intervals* are 'interruptions in daily working hours during which employees are not obliged to remain at the workplace' (Section 15, para. 1). Rest intervals are not part of the waged working time. The Act stipulates that an employee is entitled to rest after five hours of work. The precise length and number of rest intervals per working day is not established by the law but 'must be satisfactory with regard to working conditions' (para. 3). According to case law, a rest interval spans over at least ten minutes. If the employee is allowed one rest interval per day, this should last at least 30 minutes. If two intervals are scheduled, one should last at least 15 minutes and the other one 30 minutes. (Blyme, H. Arbetstidslagen 15 §, lagkommentar not 39, 1 April 2014, Karnov Internet). In addition to rest intervals, the working day must include breaks (Section 17). These breaks are part of the paid working day (para. 3). The Sections on rest intervals and breaks are mandatory.

Maximum working time refers to working hours per week, i.e. a period of seven consecutive days. According to Section 5, regular working time may not exceed 40 hours per week. As mentioned above, the Act does not prescribe how these hours should be distributed on a daily basis or the length of the work day. This is the competence of the employer. Working hours is primarily regulated by legislation, collective agreements and other contracts. Within the parameters set by these statutes, the employer has far-reaching control over how and when work shall be performed (Källström and Malmberg, 2009, p. 188–190). The right of the employer to direct and allocate work – *arbetsledningsrätten* – is a fundamental principle in Swedish labor law. Distribution of hours may also be regulated by the parties in a collective agreement as long as the rules on mandatory rest intervals and breaks are adhered to. In sectors where the nature of the work may require flexible working time arrangements, for example the agricultural sector or the service sector, the *average* weekly working time per period of four weeks shall not exceed 40 hours (Section 5, paragraph 2).

The Working Hours Act allows for overtime hours of two kinds – general (*allmän*) and extra overtime. For a full-time employee, overtime hours are those working hours that exceeds the maximum hours of regular working time, as stipulated in Section 5 or by a collective agreement. Section 8 allows general overtime of 48 hours over a period of four weeks or 50 hours per calendar month, 'subject to a maximum of 200 hours per calendar year'. In addition, extra overtime of 150 hours per calendar year may be worked by the individual employee, is there is a special reason at hand and that the

situation cannot be solved in any other way (Section 8 a). Special reasons may comprise sudden sickness among the employees or an increase in the workload that could not have been foreseen by the employer. According to paragraph 2 of Section 8 (a), the combined general and extra overtime for the individual employee may not exceed 48 hours per four weeks or 50 hours per calendar month. This provision can be circumvented by collective agreements (Section 3). Employees are compensated for overtime in paid leave or overtime pay. The rate of compensation is regulated in collective agreements (Blyme, H. Arbetstidslagen 6 §, lagkommentar not 21, 1 April 2014, Karnov Internet). Collective agreements also regulate the extent to which the employee is obligated to work overtime.

In addition to the limitations on working hours, the Act establishes certain rules on the weekly rest. According to Section 14, worker shall enjoy at least 36 consecutive hours of weekly rest within 'every period of seven days'. The provision also stipulates that the weekly rest shall be scheduled on weekends 'to the extent possible' (para. 2). The period of weekly rest may be scheduled at any point during the seven-day period.

Annual leave is regulated by the 1977:480 Annual Leave Act. According to the law, employees are entitled to 'annual leave, holiday pay and compensation in lieu of annual leave' (Section 1). Employees shall receive 'twenty-five days of annual leave in every annual leave year' (Section 4). The employee is also entitled to holiday pay 'if he or she has earned such pay in accordance with Section 7'. At least 4 weeks of annual leave shall be scheduled during the months of June, July or August unless otherwise agreed (Section 12).

4.3.2 Employment Directly in Households

General working time legislation is not applicable to employees who are employed by a private individual to perform work in his or her home. Section 1 of the Working Hours Act stipulates that the provisions of the Act shall apply to 'all activities in which an employee performs work on behalf of an employer, subject to the restrictions referred to in Section 2'. According to Section 2, work performed in employer's household is excluded from the scope of the law. These workers are also excluded from the scope of the Employment Protection Act, according to Section 1.3. Instead, this type of work is regulated by the 1970:943 Domestic Work Act. The Domestic Work Act provides more generous rules on working time than the Working Hours Act. Domestic work has always been excluded from the scope of general legislation on working time. In the preparatory work of the Act, the continued relevance of special legislation for domestic work is motivated, *inter alia,* by a need to facilitate for families with small children to employ domestic workers during long and unsocial hours (Prop. 1970:150, pp. 20–21). If this work was regulated by the Working Hours Act, the limitations on working time would require employment of several domestic workers to care for the children, provided that the parents have full-time jobs during normal working hours (ibid). According to the preparatory work, it is in the best interest of the child to have *one* full-time caretaker rather than several different part-time care-takers (ibid., p. 20).

Stricter limitations on working time for domestic workers could also hamper the possibilities for married women to find employment outside the household, as they would be confined to caring for the children, according to the preparatory work (ibid., p. 21).

The provisions of the Act are mandatory. Agreements between employer and worker that is not compliance with the provisions of the Act do not have binding effect (Section 1, para. 2).

The Act does not provide any rules on daily rest intervals or breaks. In terms of daily working hours, it stipulates that the employee shall be entitled to necessary *(behövlig)* nightly rest. This period of rest shall cover the hours between midnight and 5 a.m. if possible (Section 9).

In similarity with the provision in the Working Hours Act, the chief rule on weekly working time in the Domestic Work Act stipulates that weekly working hours cannot exceed average 40 hours per week during a four week period (Section 2, para. 1). The distribution of working hours may differ from week to week. However, the Domestic Work Act entails the possibility to extend the weekly working time beyond the limits of the Working Hours Act. Section 2 stipulates an exception to this rule, which allows for the average weekly working time to extend to 52 hours. This is permitted when the work of the employee entails child care or care taking of other members of the household unable to care for themselves**,** if the employer is unable to personally provide such care due to employment outside the home. This exception is also applicable to situations where the employer has fallen ill.

The rules on overtime are different from the rules in the Working Hours Act. The regulation of overtime is more generous in domestic work. According to Section 3 of the Domestic Work Act, the maximum limit on annual overtime is 300 hours per year. Section 8 of the Working Hours Act allows for 200 annual hours of overtime. The worker may be required to work overtime for special reasons. According to the preparatory work of the law, special reasons may encompass the need for extra help in preparation for a dinner party. It may also entail situations when the employer is required to work overtime at his or her work and therefore needs extra help with childcare. Normally, however, the worker is only required to work overtime when the two parties have agreed on it (Blyme, H. Lagen om arbetstid m.m. i husligt arbete 3 §, lagkommentar not 4, 1 April 2014, Karnov Internet).

Working time is calculated differently for domestic workers whose employment is regulated by the Domestic Work Act and other employees whose working hours are regulated in the Working Hours Act or collective agreements. Normally, provisions in collective agreements on weekly and monthly limits on working time are based on the standard five-day work week (*helgfri vecka*). If the work week is shorter due to public holidays, the permitted number of working hours is decreased. In the Domestic Work Act, no reference is made to the standard five-day work week. This led the Labour Court to conclude in AD 1991 nr 91 that this is not the standard to be used in the calculation of working time for domestic workers (p. 584). As a result, the maximum working hours is not shortened when the work week is shortened by holidays.

The right to weekly and annual leave for domestic workers is equal to that of other workers. Domestic workers employed directly in household are entitled to weekly rest to the same extent as other workers: Section 9 states that workers have the right to 36 consecutive hours of weekly rest, preferably during the weekend (para. 2). The provisions of the Annual Leave Act are applicable to domestic workers, who shall receive paid and unpaid annual leave to the same extent as other workers.

4.3.3 Self-Employment

The purpose of the Swedish labor laws is to protect the employee, whose position is inherently weaker than the employer's. Domestic workers who are independent contractors enter into contractual agreements with clients as equal parties. Protective labor laws are not applicable in these situations.

A report released by the ILO in the 1990s describes 'heterogeneity of self-employment', which 'at its best' allows workers to 'be autonomous, to realize their potential, and to reap financial rewards, while at worst it [is] a marginal and precarious form of employment' (Fudge, 2006, p. 205). According to Fudge, women's self-employment challenges the 'traditional stereotype of self-employment … linked to ownership, autonomy, and control over production', which is 'clearly distinguishing … independent professionals, and small business proprietors from waged workers' (ibid, pp. 203–204). Since these domestic workers do not 'own much by way of means of production, exercise little control over production, and do not accumulate capital', they challenge the 'simple dichotomy between subordination and independence' in our understanding of self-employment (ibid). The veil of independence may hide a relationship where the self-employed is as dependent on their client as an employee on their employer.

4.4 The Role of Trade Unions and Collective Agreements in the Adoption of Working Time Norms

The development of labor regulation in Sweden has to a large extent been controlled by employers' associations and trade unions. The rate of unionization has traditionally been very high. Although the last years have shown a significant decrease in the number of trade union members, Sweden still has the highest percentage of organized workers in the world. In 2011, the organization rate was 70 percent among workers (Kjellberg, 2014, p. 53). Collective bargaining has pushed the development of labor norms. The high rate of organization among employers and the possibility for unorganized employer to sign agreements with trade unions to adhere to conditions set by a particular collective agreement means that the percentage of workers covered by collective agreements is high, despite the falling numbers of union members (ibid., p. 43). The total percentage of workers covered by collective agreements in public and private sector is 90 percent (ibid., p. 31). Collective agreements are fundamental instruments in the regulation of labor conditions since certain minimum standards, such as

minimum wage, are set by these agreements. Many labor laws are also semi-mandatory, which means that they may be circumvented by collective agreements that are more favorable to the employee.

The role of trade unions and collective agreements for the regulation of working conditions in domestic work is dependent on the employment relationship. All workers are entitled to freedom of association. However, the rate of unionization is low among domestic workers.

In 2009, only between 5 and 10 percent of employees in home-services companies were estimated to be union members (Gavanas and Calleman, 2013, pp. 13–14). The Swedish Municipal Workers' Union, has collective agreements with 120 companies in the home-services sector (ibid.).

According to Anita Lundgren, ombudsman at the Swedish Municipal Workers' Union, employment in private households is usually informal work, i.e. unregistered with the authorities for the purpose of evading costs such as payroll taxes. These workers are not organized by the Swedish Municipal Workers' Union, and the union has not taken any measures to reach these workers. According to Lundgren, the assistance the union could offer this category of workers is very limited. There are no employers' associations for these households. As a result, no collective agreements exist for these workers.

Independent contractors may join Unionen, the largest white-collar trade union in Sweden. Membership benefits include income insurance and free legal advice but there is no possibility for independent contractors to bargain collectively for better working conditions.

4.5 The Enforcement of Working Time Norms

The system of labor inspection is well-developed in Sweden (Sigeman, 2010, p. 231). Early legislation for the protection of workers' safety and health at the workplace was adopted in the 19th century in Sweden (Gullberg and Rundqvist, 2013, p. 17). Since then, statutes in this field of law have seen several reforms, most recently as a result of Sweden's membership in the European Union (ibid., p. 18–21). Sweden has ratified the Labour Inspection Convention 1947 (No. 81) and the Labour Inspection (Agriculture) Convention 1969 (No. 129), which require state parties to 'maintain a system of labour inspection' in industrial workplaces and agriculture (Article 1 and Article 3, respectively).

Domestic statutes of central importance for labor inspection are the 1977:1160 Work Environment Act, the Working Hours Act, and the 2007:913 Work Environment Authority (Standing Instructions) Ordinance. The scope of the Work Environment Act is wide; it is applicable to practically all work that is performed in an employment relationship. In addition, some provisions apply to the self-employed (Gullberg and Rundqvist, 2013, p. 22). Local agreements between trade unions and employers' organizations are also of central importance to establish and maintain a healthy work environment (Gullberg and Rundqvist, 2013, p. 25).

Labor inspection in Sweden is executed by the Swedish Work Environment Authority (SWEA) under the Ministry of Employment (Chapter 7, the Work Environment Act). SWEA is also responsible for the inspection of labor conditions with reference to working time, according to Section 20 of the Working Time Act.

Non-compliance with legal requirements on working time may lead to penalties for the employer in the form of a fine or, in the case of a serious violation, imprisonment (Sections 17–20 of the Domestic Work Act and Sections 20–23 of the Working Hours Act).

Labor inspection shall also be carried out in private households. To protect the privacy of the employer, restrictions are imposed on labor inspection in the domestic service sector (Gullberg and Rundqvist, 2013, p. 54). According to the Domestic Work Act and the Work Environment Authority (Standing Instructions) Ordinance, labor inspection in private homes may only be carried out under special circumstances or on request by one of the parties.

According to official estimates from 2008, the average working time for domestic workers in Sweden was 32.5 hours per week (International Labour Office, 2010, p. 57). These are the formal hours of work by domestic workers. As discussed above, the interconnectedness of formal and informal work in this sector makes estimates of the total hours of work for these employees difficult to estimate.

5 The Protection of the Right to Decent Working Time for Domestic Workers in the National Regulation of Thailand and Sweden – a Comparative Analysis

The objective of this chapter is to compare the extent to which the labor laws of Thailand and Sweden regulate and protect the right to decent working time for domestic workers. The comparison is based on the understanding of decent working time in international labor standards and further parameters of decent working time proposed by the ILO: healthy working time, family-friendly working time, gender equality trough working time, productive working time, and choice and influence of the worker over working time. The first part of the chapter is a discussion on the similarities and differences of two domestic legal systems in general.

5.1 The Labor Law Systems of Thailand and Sweden

In Thailand and Sweden, the domestic legal system is situated within the civil law legal family. In both systems, central sources of labor law include the constitution, statutes, collective agreements and jurisprudence of national courts. In Sweden, EU law constitutes an additional source.

Both countries are members of the ILO. The number of ratified Conventions and Recommendations differs greatly between Thailand and Sweden. Sweden has ratified all eight fundamental conventions and the four governance conventions of special priority. Sweden has also ratified nearly half of the technical conventions. In comparison, the number of ratifications by Thailand is limited and includes only nine of the 177 technical instruments. Thailand is party to five of the eight core conventions but has not ratified the Freedom of Association and Protection of the Right to Organize Convention or the Right to Organize and Collective Bargaining Convention.

Despite these differences in the number of ratifications of international labor standards, the limits prescribed by national legislation in both countries are generally in line with international standards on working time. In Thailand, the standard working week is 48 hours, in contrast to 40 hours in Sweden. These limits are in compliance with international labor norms on working time, which prescribe that states shall progressively reduce the weekly working time from 48 hours – the limit stipulated by e.g. the Hours

of Work (Industry) Convention – to a 40-hour working week. The eight-hour work day is a general standard in Thailand and Sweden, as well as in international labor law.

As discussed in Chapter 2, labor law regulation in low- and middle-income nations often allow generous overtime hours. In Thailand, Ministerial Regulation No. 3 under the Labour Protection Act stipulates that the number of overtime hours shall not exceed 36 hours in any one week. In contrast, Swedish legislation allows for 48 hours of *total* working time per four weeks, or 50 hours per calendar month. According to the Hours of Work Conventions Nos. 1 and 30, overtime shall be fixed by regulations made by public authority. While the Conventions on working time only stipulate that overtime must be regulated by the competent authorities, the Committee of Experts emphasize that 'such authorities do not have unlimited discretion in this regard' (International Labour Conference, 2005, para. 144). Rather, such regulations must ensure that limits on overtime work are 'reasonable' and:

> 'in line with the general goal of the instruments, namely to establish the eight-hour day and 48-hour week as a legal standard of hours of work in order to provide protection against undue fatigue and to ensure reasonable leisure and opportunities for recreation and social life' (ibid.).

In light of this, it is doubtful that Thai legislation satisfies the requirements on overtime regulations stipulated by intentional labor law.

While no international convention regulates the right to rest periods during the working day, legislation in Thailand and Sweden alike stipulate that workers are entitled to a period of rest after five hours of work.

Longer periods of rest, i.e. weekly rest and annual leave, are regulated by international labor standards. Weekly rest shall consist of 24 consecutive hours every seven-day period, according to international labor standards. According to Thai legislation, workers are awarded one day off per week. In Sweden, weekly rest shall extend over 36 hours per seven-day period. In both cases, national legislation fulfils the requirements stipulated by international law. In reference to annual leave, workers are entitled to a minimum of three working weeks for one year of service by the Holidays with Pay (Revised) Convention. Depending on the length of the work week, this amounts to either 15 or 18 days. The annual leave of Thai workers is significantly shorter than for their Swedish counterparts'. Paid annual leave for Thai workers constitute six days per year. In addition to these six days, workers are entitled to 13 days of traditional holiday annually. According to Article 6 of the Holidays with Pay (Revised) Convention, however, 'public and customary holidays, whether or not they fall during the annual holiday, shall not be counted as part of the minimum annual holiday with pay'. Thai workers are not entitled to leave that corresponds to the international norms on annual paid leave. Swedish workers receive 25 days of annual leave, in compliance with international requirements.

The institutions guarding the implementation of labor legislation are similar in the two countries: labor disputes are primarily settled by the national labor court, labor inspection is carried out by a specialized

administrative body. Conditions of employment are negotiated through collective bargaining and established in legally binding collective agreements. Minimum standards in terms of conditions of work are mainly established by law (Yoshida, 2003, p. 348). While trade unions and collective bargaining are permitted in both labor systems, the position of trade unions is significantly weaker in Thailand than in Sweden. The failure of Thailand to ratify the Freedom of Association and Protection of the Right to Organize Convention and the Right to Organize and Collective Bargaining Convention is indicative of the suppression of collective labor rights here. In a recent survey by the International Trade Union Confederation (ITUC) on the protection of collective labor rights in different countries, Thailand was rated among the worst countries in this regard. In contrast, the protection of collective labor rights in Sweden was viewed as satisfactory (2014, pp. 38–39). The average rate of organization in the two countries also illustrates this difference between the two countries: in Thailand only 3.6 percent of the workforce is organized, while the rate of organization in Sweden exceeds 70 percent. As a consequence, the role of these institutions in the adoption of working time norms and the protection of workers' interests differs between the two countries.

5.2 The Situation for Domestic Workers in Thailand and Sweden

As evident from the discussion in previous chapters on the general characteristics of domestic work in Thailand and Sweden, this sector is inherently heterogeneous.

Official estimates on the number of people employed in domestic work are often inaccurate, due to the 'high incidence of undeclared or illegal work' in this sector (ibid.). The domestic service sector in both Thailand and Sweden is interlinked with the informal economy.

The occupations included in the concept of *domestic work* vary from country to country. In some countries, domestic workers include private drivers and security guards, while in others these occupations are covered by other sectors (Tomei, 2011, pp. 258–259). In Sweden, cleaning is frequently requested, while domestic workers in Thailand often provide care for children and other family members (Gavanas and Calleman, 2013, p. 7).

In addition to the various occupations and tasks that are covered by the term *domestic work*, the relationship between the worker and the household in this type of work is equally varied (Tomei, 2011, p. 259). Domestic workers in Sweden are either employed by home-services companies or the household. They may also be self-employed. In Thailand, domestic workers are commonly employed by a household, on a part-time or full-time basis. Another parameter of employment is the choice between live-in and live-out arrangements, the former which is common in Thailand (Federation of Trade Unions in Burma, 2013, p. 15). Live-in arrangements have a direct impact on terms of employment as well as working conditions (Anderson, 2000, pp. 40–41).

While domestic work in Thailand and Sweden illustrates the heterogeneity that characterizes this type of work in general, the domestic work sectors in the two countries also have certain features in common. First of all, domestic workers are predominantly women. They usually belong to disadvantaged groups – in both Thailand and Sweden many domestic workers are migrant workers (Tomei, 2011, p. 259).

Another feature of domestic work in both countries is the prevalence of informal work. Although statutory limitations on working time may be on par with the limitations set by international standards, workers are denied the protection of the law when employment arrangements are informal. In these circumstances, legislation on working hours is not adhered to. Employees in informal work often work extensive hours (American Center for International Labor Solidarity, 2007, p. 11).

Whether employed as a live-in or live-out worker, the employee in domestic work often experience a significant degree of isolation. While this is an inherent characteristic of live-in work, it remains true also for live-out workers as domestic work is usually performed by a single employee.

The isolation in domestic work restricts the ability of these employees to organize, provided their right to organize is unrestricted. In Thailand, domestic workers are prohibited by law to join a trade union. In Sweden, freedom of association is awarded all workers. Among domestic workers, however, the rate of unionization is significantly lower than the national average. Domestic workers employed in home-services companies are organized by Kommunal, but rate of unionization is only between 5 and 10 percent (Gavanas and Calleman, 2013, pp. 13–14). For workers employed by a private individual, no such organization exists. Since Thailand and Sweden display vast differences in the general rate of organization, it is noteworthy that unionization among domestic workers in both countries is extremely limited.

Another problem for this category of workers is the lack of employer organizations to bargain with. In Sweden, there are employers' associations that organize home-services companies. For private households that employ domestic workers, no such organization exists. A reason for the lack of organization among individual employers could be a failure to recognize domestic work as work and themselves as employers (Anderson, 2000, p. 158). These notions are obstacles to achieving decent work in domestic work: while working time regulation may be in place, application of such regulation is be hindered by private household not recognizing their role as employers. As a result, domestic workers are de facto denied the status as employees and the right to protection by existing labor legislation obstructed. Even if domestic workers in private households would organize, the absence of employers' associations to bargain with hinders the establishment of collective agreements in both countries. This problem prevails for self-employed in Sweden. While these workers enjoy the same right to organize as other workers, there is no possibility for this category of workers to bargain collectively for better working conditions.

As this comparison of the domestic work sectors in Thailand and Sweden shows, there is a degree of heterogeneity in domestic work. Still, certain

characteristics, that seem almost inherent in domestic work, prevail in both countries.

5.3 The Regulation and Protection of Decent Working Time in the National Regulation of Working Hours

5.3.1 Compliance of National Legislation with International Labor Standards on Working Time for Domestic Workers

The Domestic Workers Convention, 2011 (No. 189) is applicable to 'any person engaged in domestic work within an employment relationship' (Articles 1). Self-employed workers are excluded from the scope of the convention. The working time of these workers is not regulated in national or international labor law. These workers are omitted from the following analysis, in which the national regulation is compared to the standards stipulated by international law.

While neither Sweden nor Thailand have ratified the Domestic Workers Convention, the provisions in this instrument constitute internationally recognized minimum standards for domestic work. Incompliance with the standards in the convention does not constitute a breach of the State's obligations, but would be of importance for a possible ratification of the convention in the future.

As discussed above, Article 10 is the central article on working time. It stipulates that member states shall takes steps to ensure 'equal treatment between domestic workers and workers generally in relation to normal working hours, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements' (para. 1). In other words, this paragraph requires States to ensure that the working time standards for domestic workers are equal to those pertaining to the labor market in general. The requirement on equal treatment is significant, since domestic work frequently is exempted from national legislation. In addition, the Article specifically stipulates that domestic workers shall enjoy 24 consecutive hours of rest weekly (para. 2).

'Normal hours of work' can refer to both daily and weekly working hours. In both countries, the normal weekly hour is specified by legislation: in Sweden, the regular work week is 40 hours long while Thai legislation allows for 48 hours of normal working time per week. These limits are consistent with international standards on working time.

Swedish domestic workers enjoy equal treatment with workers in general in terms of normal weekly working hours. The Domestic Work Act, however, contains an exception to this rule. Weekly working hours may be extended to 52 hours per week for domestic workers with care responsibilities (Section 2, para. 2). Thai workers, on the other hand, are completely excluded from the scope of the provision of general applicability

on limits to the working week (Section 23 of the LPA). As a result, their working week may extend beyond 48 hours.

The exclusion of domestic workers from the scope of the provision on normal working time also means that the normal working day of a domestic worker in Thailand may exceed eight hours, which is the general limit to the working day (Section 23). Daily working time is not regulated by law in Sweden: the length of the working day is subject to limitations set by the rules on daily rest. For employees of home-services companies, the period of daily rest shall consist of 11 consecutive hours (Section 13 of the Working Time Act). This in on par with the regulation on daily rests for employees in general. For domestic workers employed in private households, however, the content of the right to daily rest is not regulated in detail. The exact number of hours of rest is not specified; the relevant section stipulates that the employee is entitled to 'necessary' night rest (Section 9 of the Domestic Work Act). This does not meet the requirement of equal treatment stipulated in Article 10 of the Domestic Workers Convention.

Employees in home-services companies in Sweden enjoy equal treatment with other workers in the area of normal working hours. Their daily and weekly hours working hours and periods of rest are organized according to the same principles as those that apply to the workforce in general. These workers are also entitled to limits on overtime that correspond with the general rules on the labor market.

In contrast, Swedish domestic workers who are employed in private households may be required to work more overtime than the general workforce. As discussed above, the rules on general overtime for employees in household allow for up to 300 hours annually, in contrast to the general limit on 200 annual hours of overtime.

As daily and weekly working time for Thai domestic workers is unspecified in the national legislation, a limit on overtime hours does not exist for these workers. This is clearly incompatible with Article 10 of the Domestic Workers Convention, as other workers are entitled to such limitations on standard working time and overtime (Section 23 of the LPA).

In contrast to the regulation on normal hours of work and overtime, weekly rest is an area where all domestic workers both countries are entitled to the same treatment as other workers. In Thailand, workers are awarded one day off per week (Section 28). This Section is applicable to domestic workers. In Sweden, employees in both home-services companies and private households are entitled to 36 consecutive hours of rest per week (Section 14 of the Working Hours Act, Section 9 of the Domestic Work Act). Legislation in both countries also fulfils the requirement in Article 10 that stipulates that weekly rest for domestic workers must be 'at least 24 consecutive hours' (para. 2).

The national rules on annual leave also fulfil the requirement on equal treatment stipulated by Article 10 of the Domestic Workers Convention. Domestic workers in Thailand are awarded an equal number of days of traditional and annual holiday as other workers (LPA Sections 29–30). The Annual Leave Act of Sweden is applicable to all workers. The provisions in

this Act award domestic workers 25 days of paid annual leave, the same number of days as other employees (Section 4).

A comparison of the national regulation reveals variations in the extent to which domestic legislation in Thailand and Sweden regulate and protect the right to decent working time for domestic workers. The category of workers whose rights are identical with those of the general workforce is employees in home-services companies in Sweden. As the regulation of their working time does not deviate from the general rules on working time in Sweden, the requirement of equal treatment is satisfied. The content of the legislation is also in compliance with international standards on decent working time. With reference to these legal parameters of decent working time, the right of these workers is protected by national legislation.

For employees in individual households, the other category of employees in Sweden, the right to decent working time is not protected to the same extent by the national legislation. The special Swedish law that regulates domestic work contains provisions on daily and weekly working time which do not adhere to the general regulation on working time. This constitutes unequal treatment of household employee in relation to other workers. Thus, the right to decent working time for these employees is not sufficiently protected by national legislation.

Despite recent legislative changes, national labor regulation does not fully protect the right to decent working time for domestic workers in Thailand. While the content of the working time regulation adheres to international standards on decent working time, the exclusion of domestic workers from a central provision on daily and weekly working hours is not in compliance with Article 10 of the Domestic Workers Convention.

5.3.2 The National Regulation of Working Hours and Further Parameters of Decent Working Time

In addition to the requirements on the legal standards in working time, current research in the area of working time has lead the ILO to propose five dimensions of decent working time that should guide the implementation of national and international legislation. This part is a discussion on the how these parameters are recognized in the national legislation and the situation of domestic workers in Thailand and Sweden. What is the role of these parameters in the life and work of domestic workers? How relevant are these parameters to domestic workers? How are these considerations showing in the working time policies and realities of domestic workers? This part is an analysis of how domestic legislation can be said to regulate and protect these parameters of working time in domestic work. The parameters are healthy working time, family-friendly working time, gender equality trough working time, productive working time, and choice and influence of the worker over working time.

The 48-hour working week is the ‘legal standard closest to the point beyond which regular work becomes unhealthy’, which occurs at 50 hours per week (Lee et al., 2007, pp. 8–9). International regulation on working

hours adheres to this limit. For employees in Sweden, healthy working time is guaranteed by the legal regulation on working time which stipulates that the weekly working time 40 hours long. Employees with care responsibilities in household constitute an exception to these rules. The regulation for domestic workers in Thailand does not reflect this parameter of decent working time, as the length of the working week is unregulated by domestic law. This is also true for workers not covered by national labor legislation, such as the self-employed.

The 48-hour limit is also significant for the family-friendly dimension of working time. Studies show that a large percentage of persons who work more than 48 hours per week find their working hours incompatible with family life (International Labour Office, 2011**,** p. 39). Balance between work and family life is a central consideration in discussions on decent working time and working time regulation in Europe today, but a consideration that has not always been of importance. Many working time standards are grounded in a "conception of the workplace as a discrete and bounded sphere of social and economic activity in which participants are fully and exclusively engaged" (Anxo et al, 2004, p. 15). As women have joined the workforce, the need for working time policies which allow for the combination of work and family life has become increasingly important (Anxo et al, 2004, p. 15). For domestic workers whose working time is regulated by law, in the case of Swedish employees, this parameter is reflected in the regulation of their working time, if we assume that a 40-hour week is compatible with family life. An interesting exception to this is the rule in the Domestic Worker Act, which stipulates that the weekly working time may be extended to 52 hours, if the employer is hindered from performing the necessary care work due to for example an employment outside the home. This rule makes the combination of work and family more difficult for the worker, but appears to be motivated by the needs of the employer to balance family and work life.

For other categories of domestic workers, a sound balance between work and family is even more difficult to attain. While working time for self-employed is not regulated to promote this parameter of decent working time, this type of employment is often hauled as an alternative for women who seek to combine work with family life. While self-employed women report the highest degree of satisfaction with family-work balance, 'the proportions of workers working excessively long hours are higher in self-employment than in paid (waged) employment for both men and women and in both developed and developing countries' (International Labour Office, 2011, p. 39)

One group of domestic workers that experience particular difficulties in balancing family and work life is live-in workers. As discussed with respect to healthy working time, the days of these workers are often very long. In theory, the work of live-in could be scheduled in accordance with limits on working hours as not to pose a threat to their health. The realization of family friendly working time for these workers, however, appears impossible to realize as they are physically removed from their family.

Working time is widely recognized as a factor that may hamper gender equality: long or unpredictable working hours create 'barriers to

occupational entry or progression for those with care responsibilities', i.e. women (Fagan, 2004, 136–137). The effect of long hours is two-fold; men are unable to participate in family life and women's access to the formal labor market is restricted due to their care responsibilities. Instead, women are pushed into part-time arrangements, often of a precarious character. The general trends on working hours indicate that men work longer hours than women. Domestic work seems *mal placé* in this debate on the role of working time in furthering gender equality. As discussed above, regulation of working hours for domestic workers have traditionally allowed for longer hours than general working time regulation. Statistics show that domestic workers are the group of employees who work some of the longest hours globally **(**International Labour Office, 2013a, p. 56). These workers are not hindered by their care responsibilities, rather their care responsibilities are ignored in the regulation of their working time, as evident in national labor legislation for domestic workers in Thailand and Sweden. Work in the lower segment of the labor market is also characterized by long working hours and flexible arrangements. Employees in many home-services companies request longer working hours, to earn a wage they can survive on (Kvist, 2013, p. 35). Although extensive working hours are common in the service sector, it is dominated by women. The discussion working time and gender equality must be calibrated to be of relevance as a parameter of decent working time for domestic workers.

Productive working time is interconnected with the length of the working day: '[i]n many industries, it appears that shorter hours are associated with higher output rates per hour' (International Labour Office, 2011, p. 46). In general, it is in the interests of both parties to the employment relationship to organize work to increase productivity: higher output rates serve the interests of the employers, while workers benefit from shorter working hours. Reduced working time improves employees' 'self-reported performance on the job … and satisfaction' (International Labour Office, 2011, p. 46). Domestic work is different from production in a factory or even in an office. What is the role of productivity in domestic work? For live-in workers, the idea of productivity is of limited importance. Such employment relationships are not based on an idea of productivity, but of 'permanent availability':

> 'Workers commonly complain of having to be available at both ends of the day, early in the morning for children and late at night for entertaining guests. … This is compounded by some employers' apparent dislike of seeing their workers rest: live-in workers complained that if their employer caught them sitting down, they would immediately find them a task to do. Clearly this is particularly difficult when workers are spending not just a few hours, but all their time in their employers' houses, and unlike those in live-out work, cannot control their time and make their own breaks' (Anderson, 2000, p. 41).

An increase in productivity does not lead to a shorter work day but a larger workload for the live-in worker.

For workers who service several households, either as self-employed or employees, an increase in productivity might allow them to take on more

clients, as the length of each visit is shortened. Still, working days of these workers often include periods of unproductivity, due to the commute between different household (King Dejardin, 2011, p. 2).

There is a growing recognition of the need to allow workers' preferences to be reflected in their working time arrangements (Anxo et al, 2004, p. 15). For workers in an employment relationship, collective bargaining at company level is fundamental to ensure workers' influence over working time and schedule (Messenger, 2004, p. 21). This allows 'employers and trade unions to arrive at creative and innovative agreements that balance these respective interests' (International Labour Office, 2011, p. 23). Collective bargaining could be an important tool to increase workers' choice and influence over working time. This is, however, dependent on the 'level of development of collective bargaining institutions in each country': in systems where collective bargaining is well-developed, binding agreements between workers and employers can create important standards to complement statutory norms (International Labour Office, 2011, p. 23). In Sweden, where collective bargaining institutions are well-developed, measures that allow workers to influence their work schedule have been successfully implemented. Such measures include for example the right to flextime. However, rates of unionization is only between five and ten percent among Swedish domestic workers (Gavanas and Calleman, 2013, pp. 13-14), which hampers the influence of collective bargaining in this particular sector. The organization of work is dependent on the schedule of the households, who often request that work is performed during office hours. Flexibility in working time for employees in home-services companies caters to the needs of the clients rather than the workers (Kvist, 2013, pp. 39–40).

In Thailand, domestic workers are not able to organize. The working time of these workers is solely regulated by the individual employment contract and legislation, which limits the power of the workers to influence their distribution of working hours. In Thailand, live-in work is also common. The parameter of choice and influence over working time is particularly unattainable for live-in workers. Lack of control over working hours is the 'most common complaint among live-in workers, whatever city they live in, whether they work for 'good' or 'bad' employers' (Anderson, 2000, p. 40). Flexibility in working hours for these workers is dictated by the need of their employer. Indicative of this is also the frequent 'day off swapping' among employers of live-in workers, which requires the worker to adjust their day off to suit the needs of the household (Anderson, 2000, p. 42). Cross-national unionization in this sector is just about 1 percent, suggesting that domestic workers in general have little choice and influence over their working time (Federici, 2012, p. 120).

In contrast to employees in home-services companies or private households, whose position is naturally weaker than their employer's, self-employed domestic workers and their clients are regarded as equals. In Sweden, self-employment is often hailed as an arrangement that allows for more freedom and flexibility, suggesting that self-employed have greater choice and influence over their working time (Strömberg and Wennberg, 2010, p. 171). The long hours of self-employed in comparison to other

employees suggest that the extent to which self-employed may control and influence their hours of work is exaggerated (International Labour Office, 2011, p. 39).

5.4 The Enforcement of Working Time Norms in Domestic Work in Sweden and Thailand

Labor inspection is central to the practical enforcement of working time standard, as established in the two international conventions on labor inspection: the Labour Inspection Convention 1947 (No. 81) and the Labour Inspection (Agriculture) Convention 1969 (No. 129), require state parties to 'maintain a system of labour inspection' (Article 1 and Article 3, respectively). Both instruments are ratified by Sweden; Thailand has ratified neither. However, institutions exist in both Thailand and Sweden to carry out labor inspection.

Working conditions in domestic work are particularly difficult to monitor, due to the fact that the work is performed in the private household of the employer. In Thailand, adequate inspection is hampered by insufficient numbers of inspectors: 'each labour inspector has to review about 1,000 establishments a year' (Yoshida, 2003, p. 360). De facto working conditions may differ greatly from what is stipulated by law. Even if labor inspection of private homes could be carried out in theory, the general conditions of inspection hinder effective control of working conditions in domestic work. In Sweden, restrictions are imposed on labor inspection in the domestic service sector to protect the privacy of the employer (Gullberg and Rundqvist, 2013, p. 54). Labor inspection in private homes may only be carried out under special circumstances or on request by one of the parties.

These restrictions are informed by the idea of a division between the public and the private sphere. Anderson suggests that the boundaries separating these spheres are 'not real; they shift; they are negotiable':

> The boundaries are culturally specific (Yuval Davies 1991) but even within a dominant culture, where boundaries are drawn by the state, they depend on gender, class, "race", sexuality, age and other variables … The most intimate details of a person's life may be publicly explored in an immigration appeals tribunal – I have heard Home Office lawyers inquiring in such circumstances, for example, at what age a woman "lost her virginity" (Anderson, 2000, p. 173).

In addition to these legal restrictions, the prevalence of informality in this sector may hinder the enforcement of working time norms in domestic work. As many domestic workers are migrants of irregular status, the employee herself may be reluctant to file a complaint with the authorities over violations of her employment rights.

As described in Chapter 3, studies indicate that working conditions for domestic workers in Thailand deviate strongly from working time norms in the national legislation. In Sweden, official estimates show that the average

working time for domestic workers in Sweden is 32.5 hours per week (International Labour Office, 2010, p. 57).

6 Working Time Regulation in Domestic Work from a Materialist Feminist Perspective

This concluding chapter examines working time regulation in domestic work from a materialist feminist perspective. The aim of this chapter is to discuss how the regulation and protection of working time can be understood in connection with the special role of domestic work in the international division of labor. There are significant differences between the labor law systems in Thailand and Sweden. Still, regulation of working time in both countries, and perhaps on the international level, offers insufficient protection of the right to decent working time for domestic workers. The purpose of this chapter is to discuss the working time regulation for domestic workers from a materialist feminist perspective.

6.1 'Work like any other, work like no other'

As acknowledged by the Preamble to the Domestic Workers Convention, domestic work continues to be 'undervalued and invisible'. According to materialist feminist theory, this is as result of women being defined as housewives in contrast to their worker husbands in the international division of labor (Mies, 1986, pp. 109–110). As women are reduced to non-workers, their work is reduced to non-work. Housework is transformed into a 'natural attribute of [the] female physique and personality, an internal need, an aspiration, supposedly coming from the depth of [the] female character' (Federici, 2012, p. 16). Such patriarchal notions of women's nature constitute the skeleton of a capitalist system that needs an unwaged housewife for the reproductive labor needed to sustain the wage-worker (Mies, 1986, p. 38). Since this work is unwaged, the cost of women's labor is not covered by capitalists but externalized (Mies, 1986, pp. 109–110). This notion of housework as non-work permeates our understanding of domestic work even in waged form. The relationship between the domestic worker and the household is commonly defined by the employer as a 'close, amicable interaction', a definition that may reproduce:

> 'a form of paternalism that is thought to justify domestic workers being asked to work harder and longer for a "considerate" employer without material reward. In fact, these arrangements are the vestiges of the master–servant relationship, wherein domestic work is a "status" which attaches to the person performing the work, defines him or her and limits all future options. Informal norms and some entitlements do develop, but they are subject to a power imbalance that leaves domestic workers without the kind of protection that other

> workers enjoy in the formal economy' (International Labour Conference, 2010, p. 12).

Domestic work is defined by the ILO as 'work like any other, work like no other' – an acknowledgement of the special status of domestic labor in the world of work and in society at large (International Labour Conference, 2010, p. 12).

This view of domestic work prevails in Thailand and Sweden. The role of domestic work in the 'larger economy and general social good' in Thailand is only partially recognized by the legislator (Boonitand, 2010, p. 3). Improvements in the regulation of working conditions in domestic work are recent: before 2012, domestic work was defined as informal work by the authorities (ibid.). As a result, domestic work was excluded from important provisions on working time.

Similarly, domestic work was unregulated in Swedish labor law for a long time (Calleman, 2007, p. 112). The 'contrast' between industrial employment and domestic work rendered extensive regulation of the latter unnecessary, according to the preparatory work of early legislation (ibid.). Today, Swedish labor legislation regulates the working time of domestic workers employed in home-services companies as well as private households.

However, a large percentage of domestic workers in Sweden are self-employed, and thus outside the scope of protective labor legislation. According to Mies (1986, pp. 126–127), turning women into 'small entrepreneurs' rather than employees makes 'unrestricted exploitation and super-exploitation possible'. The introduction of new forms of work motivated by a need for 'flexibilization of labor', women's productive work is once again being obscured, as they are:

> 'pushed out of the formal sector … [and] reintegrated into capitalist development in a whole range of informal, non-organized, non-protected production relations, ranging from part-time work, through contract work, to homeworking, to unpaid neighborhood work' (Mies, 1986, pp. 126–127).

This renaissance of self-employment during recent decades has largely been driven by women's increasing participation in the labor market. Self-employment may on the one hand be a way for women to achieve greater autonomy, while on the other hand may lead to precariousness (Fudge, 2006, p. 201–204). According to Fudge (ibid.), female self-employment challenges 'simple dichotomy between subordination and independence' in our understanding of self-employment, informed by the male entrepreneur. Since the expansion of the Swedish domestic service sector in 1990s, working conditions in domestic work is no longer principally addressed by the Domestic Work Act. Today, domestic work is included in the scope of regular working time legislation, when performed by employees of home-services companies. At the same time, the increase in female entrepreneurship that Mies speaks of has occurred. The introduction of flexible forms of work – the reorganization of labor – in industrialized countries such as Sweden, is a re-introduction of the 'way in which Third

World women are at present integrated into capitalist development' (Mies, 1986, pp. 126–127).

While the work of these self-employed – the female entrepreneurs – is formal work per se, working conditions that pertains to working hours are unregulated by labor legislation. In this sense, domestic work and perhaps women's labor in general is still denied recognition as real work.

6.2 'Good' and 'Bad' Women in the International Division of Labor

According to Mies, divisions among men and women based on race, nationality and other divides are inherent in the global capitalist system:

> '… every division among us expresses the division of labor: the quantity of work and the wages or lack of wages mapped out for each particular sector. Depending on who we are – what combination of sex, race, age, nation, physical dis/ability, and so on – we are pushed into one or other of these niches which seems out natural destiny rather than our job' (James, 2012, p. 176).

Mies speaks of the construction of 'good' and 'bad' women, where women in the global North are 'highlighted as mothers and consumers', while women in the global South act as 'producers' of goods and services (Mies, 1986, p. 125). Women employed in domestic work in the new international division of labor constitute Mies' 'bad' women: female workers from low- and middle-income countries who provide much of the reproductive work needed in the global North, as domestic workers, nannies and cleaners (Federici, 2012, p. 71).

As these women leave their home countries to shoulder the responsibilities needed to reproduce the workforce in the global North, their own family life may suffer. As women are the main caretakers globally, a 'care drain' is created as they leave children and other relatives behind in their country of origin (Shmulyar Gréen, 2013, p. 170–171). Salazar Parreñas (2005, p. 138) speaks of 'global care chains' – a 'three-tier transfer of care among women in sending and receiving countries of migration … [where] class-privileged women pass down the care of their families to migrant domestic workers as migrant domestic workers simultaneously pass down the care of their of their own families … to even poorer women'.

These structures prevail in domestic work in Thailand and Sweden. In both countries, migrant women make up a large portion of the workforce is in the domestic work sector. In recent years, Sweden has seen an increase in migration from women from Eastern Europe (Calleman, 2006, p. 10). While formal employment in domestic service is frequently viewed as an important step to combat social exclusion among migrants in Sweden, migrant workers and asylum seekers are also discussed in terms of an 'expanding exploitable pool of "flexible" labour' as these workers accept wages and working conditions that Swedish women do not (Gavanas, 2010, p. 10). In Thailand, workers from Burma, Laos, and Cambodia constitute over 90 percent of the workforce. Individual employers in Sweden cite

‘flexibility in terms of number of hours and when those hours are worked’ as a benefit of employing migrant workers (Anderson and O’Connell Davidson, 2003, p. 30). In contrast, Swedish workers are seen as too ‘governed by rules’ and ‘spoiled in the sense that they are able to turn down work because of the social security system, or that they [have] recourse to the labour movement’ (Anderson and O’Connell Davidson, 2003, p. 30). The same distinction between migrant workers and nationals is made by households in Thailand. Burmese workers are particularly desirable, as Thai employers characterize them as ‘cheap, hardworking, and obedient’ (Anderson and O’Connell Davidson, 2003, p. 30).

This distinction between ‘good’ and ‘bad’ women to speak with Mies, i.e. the division between ‘good’ women whose needs dictate the working hours of the ‘bad’ women, is also codified in the national legislation. The fact that daily and weekly working hours in domestic work is unregulated in Thai law, while other employees enjoy legal limitations to their working time, mimics the hierarchical relation between women. The inferior regulation of domestic workers’ working day is a display of indifference towards their time – their time that is also their life (James, 2012, p. 106). This is also a denial of their right to decent working time. Another example of how legislation echoes this distinction between women is the more generous regulation of working time for domestic workers with care responsibilities employed in Swedish households. This focus on the reproductive needs of employer’s family and the disregard for the needs of the worker’s family can be related to the different roles of women as mothers and producers, stemming from our different, designated ‘niches’ (James, 2012, p. 176).

Mies views the disregard for the family life of the domestic worker as a natural component of the division of labor and the roles of women in the rich and poor world:

> ‘If, in the course of this process of super-exploitation, they themselves and their children are destroyed, there is no great regret, for as breeders and consumers these women are seen as a threat to the global system’ (Mies, 1986, p. 123).

Federici likens the current international polarization between women in the global North and the global South today with the organizing structural principle between white and black women under the apartheid regime in South Africa’ (2012, p. 73). In her view, we now have a ‘new colonial solution to the “housework question”’ (Federici, 2012, p. 73).

6.3 The Domestic Workers Convention from a Materialist Feminist Perspective

The 2011 Domestic Workers Convention is an attempt to extend decent working conditions to domestic work. According to materialist feminist theory, the poor working conditions in waged domestic work are intrinsically linked to the international division of reproductive labor along

gender, race, and class lines. To what extent does the new convention address this issue in relation to decent working time from a materialist feminist perspective?

The Preamble of the Domestic Workers Convention acknowledges the special character of domestic work in the world of work. The new convention reiterates the application of general standards to domestic work and creates new standards specific to domestic workers. The adoption of the convention is a step towards wider recognition of domestic work as *work*. According to the Preamble, it is an attempt to place this type of work, which 'continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants … and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights', on equal footing with other sectors. Article 10 explicitly requires state parties to the convention to 'take measures towards ensuring equal treatment between domestic workers and workers generally' in the area of working time (para. 1).

But how may improvements in working conditions and increasing labor costs be reconciled with the current informality in domestic work? Tomei (2011, p. 282) points out that 'granting domestic workers … less volatile working hours … has the effect of raising the cost of domestic services that state incentives can offset only in part. This, in turn, jeopardizes the viability of significant improvements in domestic workers' working conditions'. Formal requirements on working time may not lead very far in a system that is built on the premise of this work being performed for free or at a low cost. It may also push domestic work further into informality, as a way to decrease the cost of labor. As discussed above, formal domestic work is intrinsically connected to the informal economy. Although domestic work is no longer regarded as informal work by the Thai authorities, these workers – and employers – are often acting outside the scope of law. Domestic workers in Sweden often combine a formal employment with informal work in the same households.

While the Domestic Workers Convention is an attempt to formalize domestic work, it does not – and perhaps, cannot – challenge the international division of labor in reproduction. Rather, in its provisions on equality and the right to 24 hours of weekly rest, the convention mirrors international labor standards on working time that have cemented the 'male breadwinner/female caregiver gender contract' (Vosko, 2006, pp. 55–56). The 48-hour working week as introduced by the Hours of Work (Industry) Convention, is based on the 'assumption that unpaid (presumably female) caregivers would provide for male workers' reproduction outside the labour force' (Vosko, 2011, p. 61).

In materialist feminist theory, the recognition of reproductive labor as work aims to expose the super-exploitation of unwaged women in a capitalist-patriarchy. The ultimate aim, however, is to force a reorganization of housework outside the market. Thus, materialist feminist criticism of current working time norms for domestic workers in national and international law is not leveled solely with the purpose to achieve decent wages for housework or decent working time. Rather, the aim is to 'de-link our reproduction from the commodity flows that through the world market

are responsible for the dispossession of so many people in other parts of the world' (Federici, 2012, p. 144). Despite the appearance of an 'increased interconnectedness' globally, the distance between middle-class employer in Sweden or Thailand and the family of the domestic worker in her country of origin is wider than ever (Federici, 2012, p. 145). In the global North, the global care chains are invisible. Materialist feminism seeks the collectivization of housework, i.e. a reorganization of care work outside the global market where this work currently is performed 'at the cost of the health of the provider' (Federici, 2012, p. 146). From a materialist feminist perspective, the convention limits the impact of domestic work on the health of the provider, but may be ineffective as a means to challenge the current international division of labor.

6.4 Concluding Remarks

Through the gendered allocation of labor, women have been designated the role of housewife. Despite the increasing presence of women on the labor market, the concept of the capitalist couple – the male breadwinner and the female housewife – lives on. As women are increasingly unable to take on unpaid housework due to waged labor, other women step in. In Thailand and Sweden, households in the upper and middle classes often hire domestic workers to take care of the housework. The domestic worker is often viewed as a subordinate to the woman in the household, who often takes on the task to lead the work and instruct the worker (Anderson, 2000, p. 18). Due to her gender and the tasks she is employed to perform, the domestic worker highly resembles the housewife. Thus, her status as a worker is obscured and her work is treated as 'a natural resource, freely available like air and water' (Mies, 1986, pp. 109–110).

As her work devalued and the length of the working day for the domestic worker is obscured, so is the recognition of the worker's life outside work repressed. Considerations of parameters of decent working time such as a sound work-family balance, seem absent in the regulation of working conditions in domestic work.

From the perspective of material feminism, these factors could explain the inadequacies of the regulation and protection of the right to decent working time for domestic workers in Thailand and Sweden. The regulation of working time is also affected by the lack of recognition of housework as real work, despite the presence of a wage. The tasks of paid domestic workers resemble those of a loving mother rather than the traditional wage-worker, as discussed above. Rather than being caused by the national circumstances, the lack of regulation is a result of the role of domestic work in the international division of labor.

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