Employment Law Focusing on the Rights of Domestic Workers
Research to Inform Public Education
Cecilia Babb
For IMPACT Justice
2017

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PREFACE

IMPACT Justice (Improved Access to Justice in the Caribbean) is a project funded by the Government of Canada under an agreement with the University of the West Indies, Cave Hill Campus. The project is being implemented from within the Caribbean Law Institute Centre, Faculty of Law, University of the West Indies (UWI), Cave Hill Campus.

The beneficiary countries are: Antigua and Barbuda, Barbados, Belize, the Commonwealth of Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. The Project’s primary partners are governments and civil society institutions including the CARICOM Secretariat; the OECS Commission; bar associations; the Universities of Guyana, Suriname, UWI and the University of Technology, Jamaica; private sector and legal information service providers. The Project is also expected to work closely with the JURIST, JUST and other Canadian-funded projects in the region and to cooperate and collaborate with other donor-funded projects which have similar objectives.

The ultimate outcome of the project is “enhanced access to justice benefitting men, women, youth and businesses in the CARICOM region.” Domestic workers have been identified by IMPACT Justice as a group that may be economically vulnerable because their legal employment rights are not well known, and may not be adequately protected. In 2016, Cecilia Babb, a gender specialist, was selected to report on this topic after looking at applicable international standards, employment laws and other relevant legislative provisions, as well as any actions taken by CARICOM Member States to give effect to the 2009 provision under Articles 45 and 46 of the Revised Treaty of Chaguaramas, for domestic workers to move freely within the CARICOM Single Market and Economy (CSME).

The research was undertaken and the report prepared by Ms. Babb with characteristic thoroughness. It is with great satisfaction that IMPACT Justice shares this document, which is one in a series being produced on aspects of the law which affect vulnerable groups in the CARICOM region.

Velma Newton
Regional Project Director
IMPACT Justice

February 2017
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<td>CARICOM</td>
<td>Caribbean Community</td>
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<td>COSHOD</td>
<td>Council on Social and Human Development</td>
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<td>COTED</td>
<td>Council on Trade, Environment and Development</td>
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<td>CPDC</td>
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<td>IMPACT</td>
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<td>JHWU</td>
<td>Jamaica Household Workers Union</td>
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<td>NCTVET</td>
<td>National Council of Technical and Vocational Education and Training</td>
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<td>National Union of Domestic Employees</td>
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<td>National Vocational Qualification</td>
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<td>OECS</td>
<td>Organisation of Eastern Caribbean States</td>
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<td>TAG</td>
<td>Technical Advisory Group</td>
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<td>TVET</td>
<td>Technical and Vocational Education and Training</td>
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<td>United Nations Development Programme</td>
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Employment Law Focusing on the Rights of Domestic Workers in CARICOM Member States

EXECUTIVE SUMMARY

Introduction

IMPACT Justice Project has as its ultimate outcome “enhanced access to justice benefiting men, women, youth and businesses in the CARICOM region”. In order to achieve this outcome a gender perspective informs analysis, design and implementation of project elements and activities. One of the priorities of the Year 3 Workplan, under WBS 1100 Model CSME and Other Laws, was employment law focusing on the rights of domestic workers. The focus on domestic workers creates synergy between project Component 1–increased access to gender equitable legislation, and Component 3 - improved access by the legal profession and the public to legal information. Also, the focus on domestic workers can assist the legislative framework of the CSME.

The CSME is conceived as a modern, harmonized and enabling infrastructure designed to improve trade, external investment, economic and human development in the region. Domestic workers have been granted legal rights to move and work in any CARICOM country under the CSME Free Movement of Skilled Nationals regime. The IMPACT Justice Project Technical Advisory Group (TAG) identified domestic workers as a group that may be economically vulnerable because their legal employment rights are not well known and may not be adequately protected. The TAG considers it important to expand public legal education in CARICOM Member States on the legislative provisions which exist for domestic workers, and expose any impediments to the enforcement of laws intended to treat domestic workers on an equal footing with other workers.

Research Objective

- To collect information on the extent to which employment law on the rights of domestic workers is in force throughout the CSME
- To identify issues of human rights and gender equality that should be addressed by employment law on the rights of domestic workers

Scope of Work
• Investigate whether there is model CARICOM legislation on the employment rights of domestic workers

• Provide an overview of current domestic worker employment rights law in force in the CSME/CARICOM Member States

• Provide an overview of domestic worker legislation recently passed in other Commonwealth jurisdictions

• Provide an overview of ILO C189, including its gender equality provisions, as the accepted international standard on the employment rights of domestic workers

• Identify CARICOM Member States that have ratified C189 and integrated its provisions into domestic legislation

• Provide an update on civil society mobilization of domestic workers for uptake of their free movement right within CSME; and, civil society advocacy and lobbying of CARICOM Member States to ratify C189.

• Report on the extent to which CARICOM Member States have instituted the legislative and administrative infrastructure to facilitate Free Movement of Household Domestics within the CSME.

• Document trends in Free Movement of Domestic Workers within CSME relative to sending and receiving countries, to inform targeting of public legal education and advocacy

• Make recommendations on gender issues and labour provisions that should be considered in drafting a Model Bill on the Employment Rights of Domestic Workers

Research Overview and Findings

Research was conducted to identify existing employment law specifically focusing on domestic workers in the 12 English speaking CARICOM Member States participating in IMPACT Justice Project. Other legislative provisions that should apply to Domestic Workers were also noted. Senior officials of Departments of Labour were interviewed in 8 countries and representatives of civil society in 10 countries. The General Secretary of each of the two trade unions of domestic workers in CARICOM was interviewed. The research also culled the views of organizations of People with Disabilities, First Nations/Indigenous Persons,
Employment Law Focusing on the Rights of Domestic Workers

Youth, and Women. Direct testimony of 1 former and 3 current domestic workers, and 1 employer was taken late in the process so as to protect the impartiality of the field data collection. This report presents the research findings on the extent to which employment law focusing on the rights of domestic workers is in force within CARICOM.

Section One contextualizes the CSME Free Movement rights for household domestics then provides an overview of legislation found in four CARICOM Member States (Barbados, Guyana, St. Vincent and the Grenadines, and Trinidad and Tobago) on the employment rights of domestic workers. Table 1 lists the legislation that is specific to domestic workers. The full texts are given in Annex A. The other employment laws in force in the four countries are summarized in Table 2 and a full supplementary list is given in Annex B. It is claimed that many of these laws are applicable to domestic workers. Formal complaints made by domestic workers to the Department of Labour in the 10 countries researched were used as a proxy for determining compliance with employment laws relative to domestic workers and the extent to which the legislative provisions are invoked. Table 3 lists the types of formal complaints brought to the attention of senior Labour Officers and the associated laws that are breached. The section ends with a comparison of the main provisions of the four employment laws in force specifically for domestic workers.

Section Two reviews the provisions of these same four laws from three standpoints - gender analysis, mapping against Commonwealth legislation, and scanning with articles of ILO C189. Section Three updates on mobilization for ratification of C189 by domestic workers through three trade unions and two civil society organizations. Mobilization of domestic workers and lobbying of national governments included raising awareness about the convention across society. The section also reports on the collaboration of the five organizations to lobby for the Caribbean Vocational Qualification required by Domestic Workers to be put in place, and the procedures clarified for taking advantage of the CSME Free Movement regime. Section Four presents the recommendations made by labour officials, civil society stakeholders, and domestic workers.

Employment Rights Laws for Domestic Workers

CARICOM has no model domestic workers legislation. The countries of Barbados, Guyana, St. Vincent and the Grenadines and Trinidad and Tobago have specific domestic worker legislation in force as shown below.

- Domestic Employees Act (Cap.344) 1961 (Barbados)
Employment Law Focusing on the Rights of Domestic Workers

- Rate of Pay and Hours of Duty Amendment 1982 (Barbados)
- Household Service Workers (Hours of Work) Act 1980 (Guyana)
- Minimum Wages (Household Assistants) Order (LN160/1991) (Trinidad & Tobago)
- Wages Regulation (Domestic Workers) Order 2003 (St. Vincent and the Grenadines)

Some countries mention domestic workers within their Labour Code, Employment Act, Wage Council Orders, and Minimum Wage Act (Table 1). The terminology used ranges from Domestic Servants, to Domestic Employees, Household Service Workers, Household Assistants, Domestic Helpers, and Domestic Workers. All CARICOM Member States have general employment legislation in force (Table 2) which is asserted by Labour Departments to apply fully to domestic workers. These laws are invoked to address formal complaints received from Domestic Workers. Some provisions appear within the Labour Code, Social Security and/or National Insurance Act. Belize has the Protection Against Sexual Harassment Act (CAP.107) 2000. The Guyana Sexual Offences Act 2010 contains an interpretation of “sexual” and “sexual activity”; definition of the offence of “sexual assault” [4. (a) and (b)]; and evidential presumptions [7. (2) (k)] concerning “abuse of power ...” that is popularly understood to as legislation to prevent and punish sexual harassment.

**Domestic Workers’ Claims on Legislative Protection**

The research assumes that domestic workers reflect some awareness of their employment rights and, possibly, knowledge of legislation in force when lodging formal complaints. On average, the Labour Departments receive 3 – 4 complaints annually. However one country estimated that 30 complaints were received while another cited “all the time” as the norm. Officers attribute the low level of complaints to reluctance of workers to risk the loss of employment that could result from making a complaint. This fear belies the principle that all labour legislation in force applies equally to domestic workers. If workers were fully protected by existing legislation there would be no fear of employment loss when seeking redress for the infractions of employers. The Jamaica Household Workers Union, the National Union of Domestic Employees in Trinidad and Tobago, and Barbados Workers Union also receive complaints. The complaints made by domestic workers are listed in Table 3.

The research did not interview any legal professionals, Employment Rights Tribunals, or National Insurance Schemes for accounts of domestic workers resorting to court action to secure their employment rights.
Compliance with and Application of Existing Labour Laws

Breaches of the employment rights of domestic workers take varied forms and those who commit these offences do not perceive labour laws as applying to their employees. All of the issues on which the interventions of the Departments of Labour are sought constitute non-compliance with national employment legislation. Investigative follow up by the Departments of Labour often requires emphasizing to offending employers the general applicability of all existing labour legislation to domestic workers. The violations which are detailed in Table 3 relate, but are not limited to, the following broad areas:

- inadequate wages, short pay
- delayed payments of wages
- denial of stipulated rest periods and holiday with pay
- unilateral changes in agreed number and nature of tasks
- unsatisfactory conditions of work
- non-payment of Social Security deductions and employer contributions
- sexual harassment and verbal abuse

Ratification of C189

C189, the Decent Work for Domestic Workers Convention 2011 of the ILO, sets out employment standards that extend decent work principles to domestic workers. C189 was adopted at the 2011 International Labour Organisation annual conference governments, representatives of the private sector and of workers. C189 defines a domestic worker as any person engaged in domestic work within an employment relationship. Domestic work is work performed in or for a household or households and includes such tasks as house cleaning, cooking, washing and ironing clothes, care of children, elderly or sick members of a household, gardening, guarding the house, driving members of the family and caring for household pets. These definitions were agreed to by the various delegations, including of domestic workers, which adopted the convention.

C189 consists of a preamble and 27 articles. Article 1 relates to definitions while Articles 2 to 17 confer and safeguard rights of the domestic worker. Articles 18 to 27 deal with the processes, administration, and formalities associated with ratification. The main rights granted to domestic workers in C189 include: daily and weekly rest periods as are applicable; entitlement to pay at or above the minimum wage commensurate with the
range of duties performed in a given period; protection from all forms of abuse, harassment and violence; safe conditions at work; clarity and agreement on the terms of employment and tasks to be carried out; freedom of choice in the use personal free time; independent possession of travel and personal documents; freedom of association.

**Guyana and Jamaica** have C189. It comes into force in Jamaica in October 2017 but is already in force in Guyana. According to the officials in these countries, ratification was prompted by the vibrant activism of civil society organizations that had been campaigning prior and subsequent to the adoption of ILO C189. Labour officials in other CARICOM Member States have not identified any substantive or institutional barriers to ratification of C189.

**Civil Society mobilization of Domestic Workers on CSME and C189**

Red Thread in Guyana, the National Union of Domestic Employees in Trinidad and Tobago, the Jamaica Household Workers Union, the Barbados Workers Union, and the Barbados based Caribbean Policy Development Center (CPDC) have severally and jointly mobilized on either or both the CSME and C189 prior to and after their coming into effect. Despite some lull in the activities of the latter two organizations, due to resource constraints, this grouping continues to mobilize and advocate for ratification of C189. The organizations’ activism is concentrated also on making domestic workers aware of their ‘bill of rights’ and assisting them to organize into representative bodies. The activists continue to lobby governments about the utility of ratifying C189 and building public consciousness of the socio-economic and national development contribution of domestic workers. The overall effort is directed at raising the status and value given domestic work. Engagement on CSME has slowed somewhat with the end of CPDC’s three-year project which was advocating for the requisite CVQ for domestic workers to be instituted to allow them to meet the conditions to access their free movement rights. All of the organizations link C189 with CSME.

**CSME Free Movement Infrastructure for Domestic Workers**

CSME Free Movement of Skilled National rights were granted, in 2009, to Household Domestics with Caribbean Vocational Qualification or Equivalent. Presently, the NVQ for the domestic worker is available only in Barbados, Guyana and Jamaica. A number of other CARICOM Member States, with the assistance of those with one in place, have started the
process of developing the NVQ based on the standard guidelines provided by CANTA\(^1\). Five States have not\(^2\). This means that most jurisdictions do not offer the CVQ certification required for domestic workers to initiate the application process to take advantage of the CSME Free Movement. The availability of a CVQ for domestic workers is unclear and “Equivalent” has never been defined.

The Caribbean Community Skilled National Act (Skills Act) is in force in at least 9 CARICOM Member States. Immigration and Customs Officers as well as administrators providing the Skilled Nationals Certificate have been trained to implement the CSME Free Movement Regime. COSHOD issues guiding principles for all legislation that should guarantee worker protection, however no specific category of workers is singled out. The harmonized legislation for Free Movement has been in place for a long time but not so the qualifications infrastructure for domestic workers.

Movement of Domestic Workers across CARICOM

Unpublished preliminary data being collected by the CSME Unit of the CARICOM Secretariat on the movement of nationals within the region do not indicate clearly the full extent to which Household Domestics are taking advantage of their 2009 guaranteed right under the CSME Free Movement of Skilled Nationals regime. The data analysis is inconclusive because some national level immigration statistics are categorized by country of origin and not consistently by occupation or profession. The countries of Antigua and Barbuda, Barbados, St. Lucia, and Trinidad and Tobago, which are identified by civil society activists as net receivers of domestic workers appear to be facilitating these migrants largely within the scope of work permit regulations or OECS free movement. In the absence of the requisite NVQ/CVQ in most jurisdictions, few domestic workers could be moving under the CSME Free Movement regime.

Recommendations

In the CARICOM region, an enhanced legislative framework is needed to guarantee the employment rights of domestic workers. For example, Jamaica has ratified C189 but does not have specific legislation on the employment rights domestic workers. Inevitably, employment law passed in four jurisdictions between 1961 and 1991 to regulate the conditions of domestic work does not adequately take into account the special

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\(^1\) Caribbean Association of National Training Authorities

\(^2\) Interview of the CSME Unit Feb. 2017
characteristics of domestic work as elaborated in the more contemporary decent work provisions of C189 adopted in 2011. The following recommendations for legislative reform and legal education of a range of stakeholders within the CSME draw on proposals from domestic workers, labour officials and civil society; model legislation in force in selected countries of the Commonwealth; and C189 guidelines for fair treatment of domestic workers.

Main Recommendation

Regional Level

1. Draft model domestic workers legislation for the CSME drawing on C189 as well as the exemplary provisions in force in the laws of other Commonwealth Countries and USA states cited in this report.

2. Expand the remit and accessibility of CSME Focal Points to receive complaints from migrant domestic workers and provide timely and adequate recourse.

3. Develop a programme of continuous training and refreshers for officials who are the first points of contact responsible for implementing the procedures, processes and administration of the CSME

4. Initiate a streamlined regional data collection system to incorporate domestic work into census statistics in a manner that reveals its magnitude, direct and indirect economic contributions to revenue generation and its social significance within the CSME

5. Decree a Living Wage for domestic workers in order to impute their household services with its true cultural, economic, human development and social values. A living wage is calibrated to keep pace with the cost of living or consumer price index and to maintain one’s standard of living above the vulnerability line and leave no one behind.

National Level

1. Ratify C189 and incorporate its articles into national legislation in order to address all of the gaps identified above.
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2017

a. Make use of the C189 supplement, Recommendation No 201, which contains practical guidance concerning possible legal and other measures for giving effect to the rights and principles stated in the Convention

b. Give special attention to enforcement mechanisms at various levels to give effect to the legislative protections for domestic workers, including State commitment to implementing legislative provisions

c. Any new legislation should state expressly where exclusion applies in respect of domestic workers.

2. Enact legislation to prevent and punish sexual harassment. Legislation should contain the broadest definition of sexual harassment, protocols to effectively prove harassment and appropriate remedies.

3. Mount comprehensive, long-term, multi-media, public sensitization programmes on the CSME and C189 rights of domestic workers targeting different stakeholders inclusive of the following:

a. Establish a multipartite partnership (Labour Board, employers, domestic workers trade unions, committed civil society organizations) for this purpose.

b. Convene forums for employers, migrant and national domestic workers to have orientation on, among other issues:

   i. Contingent rights under CSME

   ii. Employment and Labour laws of the country of residence

   iii. Decent Work for Domestic Workers Convention C189 and R201

   iv. Reasonable approaches to inspection of the private residence

   v. Tripartite Committees for speedy resolution of issues/complaints

   vi. The value of the National Register of Domestic Workers

   vii. Vigilance regarding the payment of national insurance contributions
4. Institutionalize within a realistic timeframe, and maintain, the local educational infrastructure necessary to offer the CVQ in Domestic Work.

   a. Offer a practical examination in which domestic workers may be video-taped demonstrating their skill and experience. Areas that do not meet CANTA standards can be highlighted for improvement and re-examination;

   b. Facilitate cross-country collaboration whereby domestic workers in the countries lacking the requisite educational infrastructure can benefit from observational visits of verifier/assessors teams.

   c. Implement an effective communications strategy to promote the CVQ/NVQ in Domestic Work as an option at Career Showcase in order for domestic workers, employers and the general public understand the trends in formalization of domestic work.
1. INTRODUCTION

1.1 CSME Free Movement Rights of Household Domestics

The CARICOM Single Market and Economy (CSME) is conceived as a modern, harmonized and enabling infrastructure designed to improve trade, external investment, economic and human development in the region. The Revised Treaty of Chaguaramas, Articles 45 and 46 of the Free Movement of Skilled Community Nationals regime grants the legal right to different categories of workers to seek viable opportunities in any CSME country to enhance their living situations. CARICOM nationals are granted the basic legal right to seek employment, the right to a definite stay of six months, the right to reside and to work, the right to social security benefits. Since the inception of CSME designated categories of workers have been granted this right. The granting of Free Movement rights to domestic workers in 2009 is a welcomed advance in the CSME.

Harmonized legislation to facilitate this Free Movement has been in place for a long time in the form of the Caribbean Community Skilled National Act (Skills Act). As shown in Table 2, at least 9 CARICOM Member States have passed this law. Immigration and Customs Officers as well as administrators providing the skilled nationals certificate have been trained to implement CSME Free Movement. The Free Movement of Skills regime is concerned strictly with migration; of natural persons being granted entry at borders. The Free Movement guarantees do not extend to issues which may affect workers once they take up residence in a CARICOM Member Country. The Council on Social and Human Development (COSHOD) issues guiding principles that should be contained in all legislation for worker protection; however, no specific category of workers is singled out.

In 2009, the CARICOM Heads of Government granted the CSME Free Movement right to Household Domestics with Caribbean Vocational Qualification. Article 9 of the Treaty of Chaguaramas binds CARICOM Member States to implement decisions of the Conference of Heads of Government, however, Antigua and Barbuda asked for derogation on domestic workers until 2020. This Member State wished to carry out a
socio economic assessment of the domestic workers employment sector\textsuperscript{3} and to set up a Technical Vocational and Employment Training agency (TVET).

The Free Movement of Household Domestics within the CSME is predicated on obtaining, upon application in their home country, a Certificate of Recognition of CARICOM Skills Qualification (Skills Certificate). Among other specified application documents\textsuperscript{4}, presentation of either the Caribbean Vocational Qualification (CVQ) or the National Vocational Qualification (NVQ) is a prerequisite.

Household domestics wanting to take advantage of the CSME Free Movement right must take the first step of obtaining a CVQ or NVQ in their home country. Their second step is application to the competent issuing authority to secure the Skills Certificate. This involves submitting the NVQ or CVQ, along with other required documentation to the authority. A comprehensive list of the documentation and the contact information is available on the CSME website.

Upon receipt of the Skills Certificate one may proceed to the desired CSME country and is eligible for entry and a six months stay to seek employment, if in possession of a valid return ticket covering that period. Anyone who is denied the six-month stamp after meeting the requirements above is entitled to a written reason for the refusal, the right to contact an Attorney-At-Law, family member or consular office; and the right to a judicial and administrative review. If the six-month stamp is obtained, the Skills Certificate will be verified during that period by the designated national authority. Indefinite stay is extended on the basis of proof of having secured employment during the period that the skilled certificate is being verified.

Barbados, Guyana and Jamaica offer the NVQ/CVQ for domestic workers. A number of other CARICOM Member States have started the process of instituting NVQ/CVQ. Five Member States have not started the process of instituting the NVQ/CVQ for domestic workers. If the required CVQ is not available in the country of residence then very few domestic workers would be able to meet the qualification for CSME Free Movement.

\textsuperscript{3} See “Advancing Decent Work for Domestic Employees in Antigua and Barbuda” Report December 2012. The Ministry of National Security and Labour, with support from UN Women, commissioned this Baseline Study.

\textsuperscript{4} See www.csmeworks.org
The CVQ is being offered in a range of subjects at secondary schools and other accredited institutions across CARICOM. The Caribbean Association of National Training Agencies (CANTA)\(^5\) provides guidelines for instituting the CVQ and NVQ within the Regional Qualifications Framework. The National Vocational Qualifications (NVQ's)\(^6\) certificate is awarded on completion of assessment measured against regional and national occupational standards. The quality assurance process for the CVQ is implemented and monitored by a local national training agency or focal point. The recognized certification bodies in the CANTA grouping are: Caribbean Examinations Council, NCTVET of Jamaica, TVET Council of Barbados and National Training Agency of Trinidad and Tobago. None of these national institutions presently offers the CVQ in domestic work.

### 1.2 Domestic Workers are not benefiting from CSME Free Movement

There is no migration of domestic workers to CARICOM Member States under the CSME Free Movement of Skilled Nationals Regime. Long existent Work Permit provisions are the legal means used by domestic workers who are able to and do migrate throughout the region. They also move under the Organisation of Eastern Caribbean States (OECS) free movement policy towards Member nationals that has been afforded long prior to establishment of the OECS Economic Union.

Exact statistics on this trend were not readily available from any institution although tentative data from the CSME Unit corroborates this information. The CSME Unit is able to give a gross figure for overall movement but this data is not disaggregated by occupation. Across CARICOM, Immigration Departments record movement by country of origin. Access to the raw data was outside the scope of this research. Status reports for a civil society project on the CSME make frequent reference to the difficulty of obtaining data from regional institutions. “Due to the nature of data collection process in the region, these indicators are not collected on a coordinated timeframe for each of the countries”\(^7\).

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\(^6\) [file:///C:/Users/My%20Acer/Downloads/CANTA_Model.pdf](file:///C:/Users/My%20Acer/Downloads/CANTA_Model.pdf)

\(^7\) CPDC project Status Report for the Quarter Oct to Dec 2014 page 6
Civil society activists identify Antigua and Barbuda, Barbados, St. Lucia, Trinidad and Tobago as receiving or destination countries for domestic workers\(^8\) from CARICOM. While nationals from any Member State can be found in another country the main migration pathways seem to be from the Commonwealth of Dominica to Antigua and Barbuda; from Guyana to Barbados and St. Lucia; from St. Vincent and the Grenadines, Guyana and Jamaica to Trinidad and Tobago; from Jamaica to St. Kitts and Nevis, and recently, to Montserrat\(^9\).

The Work Permit facilitates legal employment of domestic workers in Antigua and Barbuda, as that country sought derogation from CSME Free Movement of Household Domestics. The Labour Department in Antigua and Barbuda informed that domestic workers from other CARICOM Member States constitute the largest group of Work Permit applicants. The chart on “country of birth and citizenship” in the baseline study for Antigua and Barbuda (2012, 11) shows that out of a sample of 70 domestic workers 35 were from the Dominican Republic and 12 from the Commonwealth of Dominica. Another chart also shows a large ratio of worker permit holders in proportion to other types of immigrant status. Overall 95% of the survey respondents were non-nationals.

The study of domestic workers in Barbados (2013, 20) shows that of the 18 non-nationals in the sample 8 persons had work permits and another 8 were in the process of obtaining such. Guyana was the leading country of origin with 11 nationals among the migrant domestic workers. This survey was numerically dominated by Barbadians who comprised 82 of the 100 respondents.

### 1.3 Patterns of Domestic Work in CARICOM

Paid domestic service in the Caribbean may have arisen out of the crucible of “jobbing slaves” in urban centers where the ‘feminine’ occupations of washer, cook and maid, among others allowed some slave women to earn incomes for their masters. In Caribbean towns after slavery, the imperative to provide for their livelihood pushed many women into domestic service (cooks, washer women, nannies, seamstresses etc). This became the second key occupation after agriculture. Living-In with the

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\(^8\) Interviews conducted in Antigua and Barbuda, St. Kitts and Nevis revealed a trend of increasing numbers of domestic workers are coming to these countries from the Dominican Republic.

\(^9\) As a stepping stone to the EU
employing family was usually a condition of employment as domestics were unendingly at the service of all household members as well as being status symbols.

Domestic service was one of three major employment sectors for black women of the lower social and economic group, as shown in 1891-1921 census data for the English speaking Caribbean. Domestic service workers in Barbados numbered 11,600 in the immediate post-war years but dwindled to 7,700 females by 1970. The exploitative, paternalistic and insecure nature of employment in this sector prompted the recommendation that a survey be conducted with particular reference to wages and conditions of employment. In Guyana, domestic service was a sufficiently plagued with employment issues for women to have registered their own Domestic Workers Union during the 1950s.

Domestic work remains a significant employment sector - estimated at 5% among mature women in St. Vincent and the Grenadines; 2,167 for whom NIS is being paid in Grenada; 10,000 on the records of the NIS in Trinidad and Tobago prior to the year 2000 and numbered in 2016 at 30,000 by the ILO. Domestic workers are thought to range anywhere between 10,000 and 20,000 in Guyana and there are 58,000 – 100,000 in Jamaica, according to the island's Economic and Social Survey [prior to March 2016].

The organisation of domestic services has been evolving in recent years from a custom of long-term, sometimes lifelong, service to one family either on a Living-In or living out basis to current none-standard arrangements with increasing formalization. One aspect is the “Home Care for the Elderly” programmes evident in the Eastern Caribbean whereby housecleaning is provided by government employees. The other trend is towards employment companies that place domestic workers on task specific or long-term bases. This trend is emerging in Jamaica, Trinidad and Tobago and St. Kitts and Nevis. In Antigua and Barbuda, where the majority of domestic workers are migrants, the trend is for them to be treated as self-employed persons - allowing employers to divest themselves of statutory responsibilities.

In St. Kitts and Nevis domestic work is primarily carried out on a contract basis. There are cleaning companies that most householders prefer to hire to do a job for 4 – 6 hours. They are able to pay EC$100.00 for a job and not have the legal liabilities of
Social Security, Holiday Pay etc. The cleaning companies tend to contract migrant Spanish domestic workers at a particular rate to clean private homes. Jamaicans are more concentrated in care of the elderly. Cleaning companies are registered and monitored by the Labour Department. Individual domestic workers also operate as self-employed persons servicing 4 -5 homes with one specific task such as cleaning, cooking or laundry and eschewing multiple tasks.

In Montserrat, there are two categories of domestic workers: Self-Employed and ‘contracted’ employees. Most domestics self-employed and do not work 8 hours for a single employer. The norm is 4 hours per day at a rate of EC$10.00 – EC$20.00 depending on the task. This is negotiated by the individuals. Self-Employed domestics choose how they wish to spread or combine their tasks. Domestic work in Montserrat is mostly about hours worked rather than the tasks done. This allows the domestic worker to combine work for several employers. It allows the employers to change the nature of the tasks as required.

A similar pattern of Day Worker is emerging in Barbados with half of the domestic workers working part-time performing a specific task for different employers. There are still a proportion of domestic workers who are employed full-time with one employer, have been in the position for several years and perform a multiplicity of tasks but live at their own home. The Day Worker operating independently or for a firm, Fulltime Live-In, and fulltime Live-Out are well established domestic worker arrangements in Jamaica.

Employers are also requiring domestic workers to be more literate and be more familiar with technology. Domestic workers need to operate security systems such as electronically controlled gates, use computerized household gargets, and provide early childhood stimulation for toddlers in their care. Recently, the Labour Department in Trinidad has been encouraging all employers to register their domestic employees.

The Free Movement right legally conferred by the CSME has introduced new standards for domestic work in CARICOM Member States. The CSME is a trade treaty that is inserting previously non-existent competitive formal qualifications into the sphere of domestic work. Thus, household care as an occupation could potentially operate on an increasing specialized skills platform. The requisite infrastructure needs to be instituted at national level to facilitate the human resources development implied by
the CVQ requirements specified for that service sector. Non-standard employment arrangements that are already trending in St. Kitts and Nevis, Montserrat, Jamaica, and Trinidad and Tobago could accelerate as more domestic workers become trained and qualified. Alternatively, the established pattern could prevail of women who have acquired training and qualification moving out of domestic work to better positions in the labour market.

Domestic work is of low status; with connotations of servility, lack of pay, and being taken for granted. The Barbados Workers Union (BWU) wants to launch a Domestic Workers Division which will re-evaluate the contribution that domestic workers have made to raising some of the persons who are most successful in the society and some of the not-so-successful. BWU wants to send the message that domestic workers have been the glue that held communities together, are unsung heroes, and that domestic work is a noble profession. The proposal responds to a concern expressed in another country, in the query, “can the word domestic be replaced by one which has a better status?” As will be seen in another section of this report domestic work is plagued with the class vestiges of slavery and gender exploitation of women’s labour.

1.4 Domestic Workers Employment Rights Laws in CARICOM

The research did not find any CARICOM Model Legislation on the employment rights of Domestic Workers. The CARICOM Model Legislation on Occupational Safety and Health and the Working Environment\(^\text{10}\) applies extensively to the domestic worker, who is defined as a person employed to do household work in another person’s home or dwelling. Legislation was found, specifically on the employment rights of domestic workers, in four CARICOM Members States as shown below.

\(^{10}\) [https://www.unicef.org/easterncaribbean/spmapping/Legal/Subregional/CP/Carimodellaw-occupationalssafety.pdf](https://www.unicef.org/easterncaribbean/spmapping/Legal/Subregional/CP/Carimodellaw-occupationalssafety.pdf)

CARICOM MODEL LAW ON OCCUPATIONAL SAFETY AND HEALTH AND THE WORKING ENVIRONMENT

Application 4. (2) This Act applies to domestic (household) workers and to an owner or occupant of a private residence with respect to the work performed by the domestic worker for the owner or occupant of a private residence as follows: Sections … and the regulations thereto, apply with necessary modification to workers engaged in domestic work and employers of those workers. Annex C: Recording and Notification of Occupational Accident and Diseases, 1.3 Definitions, (b) … his/her meals (c) … his/her remuneration
Employment Law Focusing on the Rights of 
Domestic Workers 

✓ Domestic Employees Act (Cap.344) 1961 (Barbados) 
✓ Domestic Employee (Rate of Pay and Hours of Duty) Order 1982 (Barbados) 
✓ Household Service Workers (Hours of Work) Act 1980 (Guyana) 
✓ Minimum Wages (Household Assistants) Order (LN160/1991) (Trinidad & Tobago) 
✓ Wages Regulation (Domestic Workers) Order 2003 (St. Vincent and the Grenadines) 

The full text of these statutes and statutory instruments are reproduced in ANNEX A. In addition to these laws, the Labour Code or Employment Act of Belize, Grenada, St. Kitts and Nevis, and St. Lucia list “domestic workers” in the interpretation or application. Labour Commissioners in all countries emphasize that, except where expressly excluded, domestic workers are protected by all legislation on employment, wages, leave, safety, social security, free movement and human trafficking.

**Definition of Domestic Worker**

There is some variance in definition of “domestic worker” across CARICOM Member States as regards location of the work but not in the tasks to be performed. In the Barbados Act a “domestic employee” means any persons employed for reward for the purpose of performing household duties in a private dwelling house. The Guyana Act defines a “household service worker” as any person employed as a domestic in a private residence, and includes children’s nurses. The subsidiary legislation in St. Vincent and the Grenadines interprets “Domestic Worker” as a person employed wholly or partly in any private household as a cook, cleaner, children’s nurse or general household help. However, the location and scope of domestic work is expanded in an information brochure of St. Vincent’s Department of Labour to include a nursing home, a tuck shop of an educational institution, and a day-care center; as a cook, a cleaner, a child’s care-giver, or an adult care-giver. In Trinidad and Tobago the “Household Assistant” is a full-time or part-time employee who “carries out any or all duties that are part of the normal functioning of a household, such as cooking or cleaning, washing and/or ironing”. Domestic work is thus defined strictly within a dwelling house in three of the laws above and extended to educational settings in one.

As shown below, Belize also extends the location of domestic work beyond the dwelling house while Grenada and St. Lucia restrict their definitions to household and private dwelling house.
BELIZE

- Wages Councils (Wages Regulation) (Consolidation) Order Schedule
  Domestics

  “domestic helper” means any person, other than a member of the occupier’s family, employed in or in connection with domestic services of any kind.

- Belize Wage Council Act Chapter 302 11 Wages Council (Establishment) Order Schedule
  88/1990 Domestic Wages Council

  All workers employed, whether full time or part-time, as housekeepers, or household helpers in any dwelling house, pension, guest house, institution, or any similar establishment not specifically covered by other legislation.

- Labour Act Cap 297 Interpretation (p.19)

  “domestic servant” includes any house, garage or garden servant employed in or in connection with domestic services of any private dwelling-house but does not include any person employed in the service of establishments open to the public;

GRENADA


  “domestic worker” means any person, who is employed for the purpose of undertaking household chores including but not limited to cooking, washing, ironing, baby-sitting, and general cleaning;

ST. LUCIA


  “domestic worker” means a person employed for a wage in and about a private dwelling house;

11 Revised Edition 2003 prepared by the Law Revision Commissioner
Application of legislation to Domestic Workers

BELIZE

- Belize Labour Act Chapter 297\(^{12}\) PART XVII Domestic Servants
  Application to Domestic Servants 40 of 1963

182. The Minister may from time to time make regulations applying all or any of the provisions of this Act to domestic servants and may make regulations not inconsistent with any of the provisions of this Act, to provide generally for the engagement, repatriation and working conditions of domestic servants.

GRENADA

- Grenada Minimum Wages Order, 2011 applies to Domestic Workers in all parishes.

ST. KITTS/NEVIS

- Saint Christopher Nevis and Anguilla, The Labour Ordinance, 1966 ; No. 8 of 1966

  Inspections of private premises where domestic servants are employed
  13. Notwithstanding the provisions of paragraph (a) of section 12 of this Ordinance no visit or inspection of private premises where domestic servants are employed may be made except at reasonable times between the hours of 9a.m. and 6 p.m.

- Labour (Minimum Wage) Act (Cap. 18.19) Sec. 3. Domestic Workers Orders 2005

ST. LUCIA

- St. Lucia Labour Code No. 37 of 2006

\(^{12}\) Revised Edition 2000 prepared by the Law Revision Commissioner
In this Code – “manual labour” includes work ordinarily performed by mechanics, artisans, handicraftsmen, seamen, boatmen, transport workers, domestic workers and all labourers and any other similar work associated with such work, but does not include clerical work;

Application

3. – (1) Subject to subsection (2) and except where otherwise expressly excluded, this Code applies to all employees including domestic workers, homeworkers and people employed at all workplaces.

1.5 Main Provisions of Domestic Workers Legislation

Review of the updated Index\textsuperscript{13} of Statutes and Subsidiary legislation of 12 CARICOM Member States reveals many employment rights laws for workers in general and some recognition of Domestic Workers in particular. In Guyana, for example, the 1959 terminology “Domestic Servants” was amended to “Household Service Worker” and their Hours of Work are addressed under the Holidays with Pay Act. Belize changed similar terminology to “Domestic Helper” within its Wage Regulations.

Comparison of the main provisions, similarities and differences among the four pieces of domestic workers legislation shows the Trinidad and Tobago Minimum Wages Order 1991 to be the most comprehensive. The St. Vincent and the Grenadines Order 2003, which revoked the 1989 Order, is closer in its provisions to that of Trinidad and Tobago. Comparatively, the domestic workers legislation in force in the four countries grant similar protections, however these are fully detailed in a single Order in Trinidad and Tobago, and slightly less so in St. Vincent and the Grenadines. The legislation of Barbados and Guyana are not as detailed.

Guyana’s 1980 Act does not contain provisions for minimum wage, sick leave or maternity benefits. These provisions are found in the Labour (National Minimum Wage) Order 2016, and the National Insurance and Social Security, Chapter 36:01 Act No 15 of 1999. The Barbados Act 1961 and amendment of 1982 lack vacation, sick leave and maternity leave. These provisions are found in the Holidays With Pay Act

\textsuperscript{13} Compiled for most CARICOM Member States at January 2016
Employment Law Focusing on the Rights of Domestic Workers

(CAP. 348), National Insurance and Social Security Act (CAP. 47) and Employment of Women (Maternity Leave) Act (CAP. 345A).

The Orders in Belize, Grenada, and St. Kitts and Nevis extend minimum wage coverage to domestic workers. General applicability of all existing labour legislation to domestic workers is established in the Labour Code of Belize and of St. Lucia. The Grenada Employment Act 1999 lists Domestic workers in relation to hours of work which is set at a maximum of 60 hours weekly, excluding overtime. The Grenada Minimum Wage Orders 2011 stipulates for 4 days or less for the prescribed wage.

The 4 employment rights laws for domestic workers and other subsidiary legislation that mention domestic workers are listed Table 1. The full text of the four laws is reproduced in Annex A.

Table 1: Employment Laws specifically for Domestic Workers in CARICOM

<table>
<thead>
<tr>
<th>COUNTRIES</th>
<th>LEGISLATION SPECIFIC TO DOMESTIC WORKERS</th>
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</table>
| Barbados          | Domestic Employees Act (Cap. 344) 1961 Amendment 1982  
                   | Sec. 3A: Domestic Employees (Rate of Pay and Hours of Duty) Order 1982 (81/1982)                        |
| Guyana            | Holidays with Pay Act  
                   | Sec 3. Domestic Servants Order (1959)  
                   | Renamed 1980 (by Order)  
                   | Household Service Workers (Hours of Work)Act 1980                                                   |
| Trinidad and Tobago| Minimum Wage Act (Chap. 88:04)  
                   | Minimum Wages (Household Assistants) Order (LN 160/1991)                                             |
| St. Vincent and the Grenadines | Wages Council Act (CAP. 217)  
                   | Sec. 3: Establishment of Wages Council Orders  
                   | Domestic Workers (1981)  
                   | Domestic Workers (1989)  
                   | Domestic Workers (2008)  
                   | Wages Regulations (Domestic Workers) Order 2003                                                    |
| Belize            | Labour Act (CAP. 297)  
                   | Sec. 177: Labour (Application to Domestic Servants) Reg. (3/1963)  
                   | Wages Council Act (CAP. 302)  
                   | Sec. 3: Sch: Domestic Wages (88/180)  
                   | Sec. 7: Wages Regulations (... and Domestic Helpers) Order 1993                                     |
| Grenada           | Employment Act 1999 Part VI  
                   | Minimum Wages Order, 2011                                                                           |


|                     | Labour (Minimum Wage) Act (Cap.18.19)  
|                     | Sec. 3: Domestic Workers Orders  
|                     | Orders 2005  
| St. Lucia           | Labour Code No 37 of 2006  
|                     | [Labour Code (Amendment) Act 2011(No. 6 of 2011)]  

**Terminology**

The statutes referenced were enacted between 1961 and 2003 and evidence a shift away from the classification of “domestic servants” to more contractual terms such as Domestic Employees, Household Service Workers, Household Assistants, and Domestic Workers.

“Domestic Workers” has been selected in the interpretation or application of more recently enacted legislation (Grenada, St. Lucia, St. Kitts and Nevis). The term “Domestic Helper” is used in the laws of Belize.

**Place of Work**

All of the Acts and Orders of Barbados, Grenada, Guyana, St. Kitts and Nevis, St. Lucia, Trinidad and Tobago, whether specific to or applicable to domestic workers, locate the place of work and duties within a “private dwelling-house”, “private residence”, “household”, “private household”.

Belize includes “dwelling house” as only one of the locations where household helpers may work since there are other possible workplaces such as “pension, guest house, institution, or similar establishment”.

St. Vincent and the Grenadines, in an information brochure of the Department of Labour, includes nursing home, tuck shop\(^{14}\), pre-school, kindergarten, or day-care centre as places of work for the domestic worker.

\(^{14}\) Of an educational institution such as primary or secondary school
Employment Law Focusing on the Rights of Domestic Workers

Hours of Work

The 1982 amendment made in Barbados demarcates a 44 hour work week. The Trinidad and Tobago Order has a similar provision, exclusive of lunch and other rest period, and stresses that the 44 hours must take place within a 6 day week.

The Guyana Act of 1980 specifies an 8 hour normal working day and no more than 48 hours per week for household service workers. This has been amended to 40 hours 5 days in the Labour (National Minimum Wage) Order 2016.

St. Vincent and the Grenadines stipulates no more than 10 hours per day of which 2 hours must be for rest and meals; Living-In workers may work no more than 11 hours of which 2 hours must be for rest and meals.

Rest Periods

The St. Vincent and the Grenadines Order 2003 makes provisions for daily periods totaling 2 hours to rest and have meals, one afternoon off weekly, and all Sundays or Saturdays off based on religious preferences.

The Trinidad and Tobago 1991 Order grants a daily lunch and rest period, one day off each week and limits accumulation of days off to no more than 4, at which time, compulsorily, the accumulated days off must be taken.

The Barbados 1982 Amendment makes provision for a daily break of 1 hour, which shall not be included in the computation of the hours of actual work. Additionally, in every month, the domestic employee shall be granted 2 rest periods - each of not less than 24 consecutive hours.

The Guyana Act of 1980 specifies weekly time off of 24 consecutive hours regardless of whether employment is on a weekly, fortnightly or monthly basis.

Vacation Leave/Annual Holidays

These provisions are absent from the domestic worker statutes of Barbados and Guyana. They are contained in the Holidays With Pay Act (CAP. 348) (Barbados) and the Leave With Pay Act No. 6 of 1995 Cap. 99:08 (Guyana).
Employment Law Focusing on the Rights of Domestic Workers

Trinidad and Tobago and St. Vincent and the Grenadines each entitle a full-time domestic worker to 2 weeks annual vacation with pay, after 12 months of continuous service. St. Vincent raises the entitlement to 3 weeks after 5 years of service. The Trinidad and Tobago Act has a provision for additional days to be added, should sickness or a public holiday occur during a period of annual vacation. The Trinidad Order provides for a part-time household assistant who has worked continuously to be granted paid annual vacation. The Order explicitly states that public holidays that fall on a work day are days off with pay.

*Medically Certified Sick Leave and Maternity Leave with Pay*

The legislation of St. Vincent and of Trinidad make provisions for 14 days paid sick leave after a domestic worker has been working with the same employer continuously for six months. The worker must submit a medical certificate by day 3 of absence from work and payment is apportioned according to Social Security or National Insurance regulations.

The entitlement for paid maternity leave and return to work is provided in the legislation of St. Vincent, and of Trinidad in line with national provisions for other workers. The St. Vincent instrument grants 4 maternity weeks leave to the domestic worker who has been employed continuously with the same employer for a period of 2 years. The Trinidad and Tobago legislation provides 13 weeks maternity leave to household assistants and does not stipulate any required employment period. However, the eligibility criterion is specified in the Trinidad and Tobago Maternity Protection Act Chap. 45:57 of 1998 Section 8. (1) (a) as “twelve months continuous service” to an employer.

*Rates of Pay/Overtime/Minimum Wage*

The minimum wage is the rate below which an employer is prohibited from contracting an employee to work continuously for 8 hours per day. The Minimum Wage Order normally requires employers to continue to pay any more favourable rates that predate the Order and to bring lower pay in line with the Order.

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The Barbados 1982 amendment of the Domestic Employee Act, stipulates a minimum rate of BD$1.50 per hour, provides overtime at “a rate of pay not less than half as much again” as ordinarily remunerated. The employee has discretion about doing overtime.

The 2003 revision of the Belize Wages Council Act Chapter 302, Wages Councils (Wages Regulation) (Consolidation) Order, Schedule Domestics, authorizes that the minimum basic wages rates for domestic helpers, employed full-time or part-time, shall be two dollars and twenty-five (BZ$2.25) per hour. The Labour Act Chapter 297 contains the stipulations for overtime.

The Grenada Minimum Wage Order, 2011 stipulates EC$35.00 per day; EC$725.00 per month. “This daily rate shall be paid to a Domestic worker who works for 4 or less days per week”. Overtime is treated in the Employment Act 1999.

The Guyana Act of 1980 did not stipulate the rate of pay; however, it set, for every hour or part thereof, an overtime rate of “one and one-half times the rate” of normal pay. Guyana’s Labour (National Minimum Wage) Order 2016 stipulates no less than GUY$255.00 per hour for domestic work, a 5 day week of 40 hours, and requires employers not to lower the pay of any worker on account of the Order.

The St. Vincent and the Grenadines 2003 legislation provides a Minimum Wage of EC$20.00 per day for persons employed in domestic work on a day to day basis; and monthly rate of EC$300.00 with meals for persons with Living-In accommodation. Persons without Living-In accommodation are entitled to meals and EC$350.00 per month. The Schedule does not mention overtime.

The Trinidad and Tobago 1991 legislation stipulates minimum remuneration for a full-time household assistant as follows: TT$150.00 per week, TT$5.10 per hour overtime, and TT$6.80 for public holidays. A part-time household assistant has a minimum hourly rate of TT$3.75 per hour and TT$7.50 per hour for public holidays. Overtime does not apply to the part-time assistant.

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16 US$1.50 approximately
Records

The Barbados Act requires employers to keep a record of overtime. The Guyana Act requires a register of wages, hours and conditions of work which shall be produced for any inspection. Trinidad and Tobago's legislation requires that duties be clearly set out in writing by the employer. The St. Vincent legislation makes no provisions for any type of records to be kept.

Offence

The legislation of Barbados, Guyana, and Trinidad and Tobago create an offence and specify penalties. The law in St. Vincent and the Grenadines does not create any offence.

1.6 Other Employment Legislation Applicable to Domestic Workers

Departments of Labour consistently assert that all existing employment and labour laws apply to domestic workers except where exclusion is expressly stated. Most of these laws may be grouped under the Labour Code. CARICOM Member States also have several separate statutes and statutory instruments that protect the rights of all workers. Some of the many labour laws which can be enforced to protect the employment rights of domestic workers are highlighted in Table 2. Annex B contains a list of employment laws in the four countries that have legislation for domestic workers.

The Labour Code or the Labour Act is the most comprehensive statute on employment and labour rights in CARICOM Member States. In seeking to determine the degree to which domestic workers are protected by law, this legislation is the major source of rights provisions. Belize and Guyana each has a Labour Act. The Labour Code is found in Antigua and Barbuda, Montserrat, and St. Lucia. Barbados has a Labour Department Act and Dominica has a Labour Standard Act. In Grenada the Labour Code is comprised of the Labour Relations Act and the Employment Act both of 1999. Similarly St. Vincent's Labour Code consists of the "Protection of Employment Act" and the "Wage Regulation Act". Trinidad and Tobago has the Industrial Relations Act 1972. The St. Lucia Labour Code defines domestic worker (p.673) therefore a domestic worker is as protected as other workers. Currently, the Labour Code is being reviewed.
Employment Law Focusing on the Rights of Domestic Workers

The Antigua and Barbuda Labour Code (Cap 27) brings together all major legislation applicable to industrial relations and employment standards. The Labour Code includes provisions on contracts, periods of probation, regulations on leave privileges, remuneration, a national minimum wage rate, and maximum hours of work on a daily as well as a weekly basis. The Labour Code also deals with health, safety, welfare and minimum registration requirements. It establishes regulations on offences, penalties and legal proceedings. The Labour Code provides for a Labour Board and Arbitration Tribunal as well as Conciliation Hearings. The responsibilities of the Labour Commissioner and Labour Inspectors are set out in the Code. It does not empower officers to inspect private dwelling houses.

In Montserrat, all domestics are covered by the Labour Code 2012. There is no separate legislation for Holiday With Pay, Maternity Leave, Minimum Wage or Occupational Safety and Health. All these issues are covered in the Labour Code 2012. The Code stipulates vacation entitlement, rate of pay per hour, hours of work. The Labour Code allows officers to visit only the yard of private homes. The Code gives the Commissioner the authority to seek a warrant to enter into the dwelling. If an injury is reported the worker would be advised to get a medical report and the Department will follow up with a telephone call. If there is abuse or assault the police would take up the case. Social Services can also go to the home but both the police and social services need a warrant to enter the residence.

Grenada’s Labour Code Section 15 defines the domestic worker, as someone involved in household chores. Section 39 of the Employment Act specifies the Hours of Work as being no more than 10 hours consecutively, within which time there must be 2 hours for lunch; and compensation for overtime. The law provides for redundancy at the rate of 1 week’s wages for every year worked. Section 82 of the Employment Act provides for Holiday Pay, Hours of Work, termination allowance and other allowances. Section 75 1 (d) speaks about Notice. Domestic workers are entitled to compensation when terminated. The Act also provides for Maternity Leave. Section 14 gives the labour officer the power to inspect. The revised Labour Code of 2016 gives 1 – 2 weeks of leave for each year worked. The revised Labour Code was accepted Nov. 20, 2016 but there is no commencement date.

There is no Labour Code in St. Kitts and Nevis. The Labour Department has been trying to modernize and consolidate 25 pieces of legislation into one Labour Code for the
Employment Law Focusing on the Rights of Domestic Workers

In the past several years, the Factories Act is out of date and an Occupational Safety and Health Act is needed. Issues to be addressed include: equal opportunity for employment, termination of employment, hours of work, equal pay for equal work, prevention of child labour, and freedom of association among others.

The Labour Department Act of Barbados authorizes the Labour Officers to enter any place of employment however there is sensitivity about entering a private residence. Respect for the privacy of dwelling houses has taken precedence over the welfare of the domestic employee in Barbados’ Occupational Safety and Health at Work Act.

Table 2: Employment Legislation equally applied to Domestic Workers

<table>
<thead>
<tr>
<th>GUARANTEES</th>
<th>LEGISLATION</th>
<th>COUNTRIES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>WAGES</strong></td>
<td>Minimum Wage Act</td>
<td>Jamaica, St. Kitts/Nevis, St. Lucia, Trinidad</td>
</tr>
<tr>
<td></td>
<td>Minimum Wage Act and Board</td>
<td>Barbados</td>
</tr>
<tr>
<td></td>
<td>Minimum (Basic Wage) Order</td>
<td>Antigua and Barbuda</td>
</tr>
<tr>
<td></td>
<td>Labour Standards (Minimum Wage) Order</td>
<td>Dominica</td>
</tr>
<tr>
<td></td>
<td>Protection of Wages</td>
<td>Antigua &amp; Barbuda, Barbados, Grenada, Montserrat, St. Lucia</td>
</tr>
<tr>
<td></td>
<td>Holiday with Pay Act</td>
<td>Barbados, Guyana, Jamaica St. Kitts/Nevis, St. Lucia</td>
</tr>
<tr>
<td></td>
<td>Equal Pay Act 2009</td>
<td>St. Vincent &amp; Grenadines</td>
</tr>
<tr>
<td></td>
<td>Equal Pay Act 2012</td>
<td>St. Kitts/Nevis</td>
</tr>
<tr>
<td></td>
<td>Equal Pay Act 2013</td>
<td>Belize</td>
</tr>
<tr>
<td><strong>EMPLOYMENT</strong></td>
<td>Protection of Employment Act 1990</td>
<td>Dominica, St. Kitts/Nevis</td>
</tr>
<tr>
<td></td>
<td>Protection of Employment Act 2002</td>
<td>St. Vincent/Grenadines</td>
</tr>
<tr>
<td></td>
<td>Protection of Employment Act 2009</td>
<td>St. Lucia</td>
</tr>
<tr>
<td></td>
<td>Equality of Opportunity and Treatment in Employment and Occupation Act (CAP. 16.14)</td>
<td>Montserrat</td>
</tr>
<tr>
<td></td>
<td>Employment Act (CAP. 15.03)</td>
<td>Barbados</td>
</tr>
<tr>
<td></td>
<td>Employment Rights Act 2012</td>
<td>Barbados</td>
</tr>
<tr>
<td></td>
<td>Employment of Women (Maternity Leave) Act</td>
<td>Barbados</td>
</tr>
<tr>
<td></td>
<td>Maternity Protection Act (Chap. 45.57) Amendment 2012</td>
<td>Trinidad and Tobago</td>
</tr>
</tbody>
</table>
### Employment Law Focusing on the Rights of Domestic Workers

#### SAFETY

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational Safety and Health at Work Act (Chap. 2008)</td>
<td>Barbados</td>
</tr>
<tr>
<td>Employment Safety Act (Chap. 89:05)</td>
<td>Dominica, Trinidad</td>
</tr>
<tr>
<td>Safeguard Act 2001</td>
<td>Jamaica</td>
</tr>
<tr>
<td>Employees (Occupational Health &amp; Safety) Act (CAP.107) 2000</td>
<td>St. Lucia</td>
</tr>
<tr>
<td>Protection Against Sexual Harassment Act (CAP.107) 2000</td>
<td>Belize</td>
</tr>
<tr>
<td>Sexual Offences Act</td>
<td>Guyana</td>
</tr>
</tbody>
</table>

#### SOCIAL SECURITY/NATIONAL INSURANCE

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Security Act</td>
<td>Antigua, Belize, Dominica, Grenada, Montserrat, St. Kitts/Nevis, St. Vincent/Grenadines</td>
</tr>
<tr>
<td>Provident Fund Act 1973</td>
<td>Jamaica</td>
</tr>
<tr>
<td>National Insurance Act (Chap. 32.01)</td>
<td>Trinidad and Tobago</td>
</tr>
<tr>
<td>National Insurance and Social Security</td>
<td>Barbados, Guyana,</td>
</tr>
</tbody>
</table>

#### EQUALITY

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equal Rights Act 1990; Prevention of Discrimination Act</td>
<td>Guyana</td>
</tr>
</tbody>
</table>

#### CARICOM

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caribbean Community Skilled National Act</td>
<td>Antigua, Barbados, Dominica, Grenada, Guyana, St. Kitts/Nevis, Jamaica, St. Lucia, Belize</td>
</tr>
</tbody>
</table>

#### TRAFFICKING

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transnational Organised Crime (Prevention and Control) Act 2011</td>
<td>Barbados,</td>
</tr>
<tr>
<td>Trafficking in Persons Act 2011</td>
<td>Trinidad /Tobago</td>
</tr>
<tr>
<td>Trafficking in Persons (Prevention) Act 2002</td>
<td>St. Kitts /Nevis</td>
</tr>
<tr>
<td>Prevention of Trafficking in Persons Act 2011</td>
<td>St. Vincent/Grenadines</td>
</tr>
<tr>
<td>Trafficking in Persons (Prohibition) Act 2013</td>
<td>Belize</td>
</tr>
</tbody>
</table>

### 1.7 Compliance with Domestic Workers Legislation in Force

Many domestic workers have an employment experience comparable with other workers in the labour force. Most employers treat the domestic workers fairly. Some pay more than the minimum wage, others give goods in-kind in addition to correct wages, a few assist with medical bills, most give an end of year hamper and cash bonus, and a select few include the domestic worker in family vacations. Every domestic worker does not have a bad experience, but many do.
Formal complaints to official bodies such as the Ministry of Labour or, where these exist, to the domestic workers’ trade unions were taken as a proxy for identifying breaches in the law. The trade unions and the Departments of Labour explain that the national laws in force are the basis for investigating any complaints and engaging offending employers. These institutions also report that employers are not knowledgeable about the laws and also do not perceive employment legislation as equally applicable to domestic workers, as to other categories of workers.

The incidence of complaints to Departments of Labour was low in most CARICOM Member States. Responses varied from “hardly ever” to “perhaps 2 to 3 per year” or “3 or 4 per year” to “there are very few complaints”. However, officers in Antigua and Barbuda indicated that complaints were received “all the time”. Grenada’s Labour Commissioner admitted complaints could be as many as “about 30 per year”. In each country where the incidence of formal complaints was low, the senior labour officers offered the caveat that workers do not come forward for fear of losing their jobs. Even in the two countries where responses implied a high number of complaints, the officers cautioned that workers fear victimization. This fear belies the principle that all labour legislation in force applies equally to the domestic worker. If workers felt fully protected by existing legislation there would be no fear of loss of employment when seeking redress for employers’ non-compliance with the laws.

The perception of recurring infractions against the employment rights of domestic workers across CARICOM is shared by all key informants. Departments of Labour, trade unions, youth representatives, and women’s groups seemed well acquainted with the violations of the employment rights of domestic workers. The testimony of domestic workers, taken at the last stage of field interviews, confirmed the impression of frequent breaches of employment law in respect of this category of workers. Table 3 presents a summary list of complaints, employment rights of domestic workers that are violated and the laws that are breached.

Baseline studies conducted in Antigua and Barbuda (2012) with 70 domestic workers and in Barbados (2013) with 100 domestic workers fully document these infringements. Many of the domestic workers do not know that there is legislation, in the CARICOM Member States where such laws are in force, specifically to protect their employment rights. This situation hampers their exercise of the rights and freedoms
already provided and reinforce the widespread devaluation of their work. As a result they make few claims for their employment welfare and security.

**Table 3: Complaints made by Domestic Workers to Departments of Labour**

<table>
<thead>
<tr>
<th>ISSUES</th>
<th>COMPLAINT DETAILS</th>
<th>LAWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation</td>
<td>Low wages, Not getting paid on time, no overtime pay, no vacation pay, Pay below the Minimum Wage, no Holiday Pay, dismissal without pay, no pay if you are Living-In; no increase in pay for extra work</td>
<td><em>Rate of Pay; Holiday with Pay; Wage Council Act</em></td>
</tr>
<tr>
<td>Duties</td>
<td>Overworked; tasks are constantly added, tasks increase over time; told to do more - cook, laundry, clean, care of children; unilateral changes in duties and time of work; no well defined hours of work, no clear job description,</td>
<td><em>Rate of Pay and Hours of Work</em></td>
</tr>
<tr>
<td>Statutory Payments</td>
<td>No terminal benefits such as Severance or Redundancy Pay, no pay in lieu of Notice, No employer willing to be responsible for severance when you work for several different members of one family in their separate homes</td>
<td><em>Employment Act; Labour Code</em></td>
</tr>
<tr>
<td>Social Security</td>
<td>NIS not paid although deductions are made, Employer does not make his/her contributions,</td>
<td><em>Social Security Act</em></td>
</tr>
<tr>
<td>Rest/Leave entitlements</td>
<td>No rest periods, no time off, no vacation, no Maternity Leave,</td>
<td><em>Hours of Work</em></td>
</tr>
<tr>
<td>Sexual Harassment</td>
<td>Sexual harassment, sexual harassment, sexual harassment, sexual harassment, sexual harassment, Punitive reactions to unwelcomed sexual advances; sudden dissatisfaction with your work when you resist advances, the boss comes out of the bathroom and hang around you</td>
<td><em>Protection Against Sexual Harassment</em></td>
</tr>
<tr>
<td>Abuse</td>
<td>Verbal and physical abuse, talking to you as though you are not human, accuse you of stealing, you are out of work if the family goes overseas because they don’t pay you vacation;</td>
<td><em>Labour Code</em></td>
</tr>
<tr>
<td>Living-In</td>
<td>Food, board, in-kind contributions but no cash payments; called to work at any time, end up doing more hours; lack of privacy, no door, door can’t be locked; boss can come into your room anytime</td>
<td><em>Labour Code</em></td>
</tr>
</tbody>
</table>
The high incidence of employer non-compliance, domestic workers’ fear of reprisals, and limited provisions of laws in force makes the case for special legislation that addresses the circumstances and characteristics of domestic work. The law must provide workers with complaint mechanisms and contain effective enforcement of provisions that are fair to both employers and employees.

Representatives of the Department of Labour in many countries cited the challenge of applying the legislation for safety at work to domestic workers. In Montserrat the Labour Code 2012 grants access to the yard of a dwelling but a warrant is needed to enter the private home. St. Kitts & Nevis stipulates entry between 9.00 am and 6.00 pm, with due prior notice, for inspection of private dwellings. In St. Lucia’s Employees (Occupational Health and Safety) Act private dwellings are excluded from inspection. The same exemption is contained in the Occupational Safety and Health at Work Act 2005 of Barbados. The authority to inspect premises contained in the Barbados Labour Department Act has always been treated with great caution with respect to residences. The Antigua and Barbuda Labour Code Cap. 27 Division D “Employment Health, Safety and Welfare” is silent on inspections of private residences; thus Labour Officers are not authorized to enter. No authority is granted to enter and inspect private residences in Jamaica, St. Vincent and the Grenadines, and Trinidad and Tobago. Jamaica is trying to surmount this challenge and follow the CARICOM Model Legislation on OSHAW that guarantees domestic workers comprehensive protections. In Guyana, Labour Officers have the authority to enter and inspect households.

1.8 Origins of Legislation Pertaining to Domestic Workers in the Commonwealth Caribbean

Einat Albin (2013) traced the evolution of the treatment of domestic workers as a legal category in the United Kingdom in an article entitled “From Domestic Servant to Domestic Worker” which was published in the March 2013 edition of the SSRN Electronic Journal (DOI: 10.2139/ssrn.2240245). Albin explains that up until the mid-
twentieth century the UK had different sets of labour laws pertaining to different groups of workers, each with its own set of rules.

Fifteenth century legislation recognized “menial servants”; defined as those working and living within the household or its encircling walls. A subset of this group, the ‘domestic servant’ was a legal category from the eighteenth century until the mid-twentieth century and benefited from the boundaries that emerged between different legal categories of workers. For example, domestic servants were differentiated from other groups of servants and awarded protection of their wages in eighteenth and nineteenth century court judgments, although the body of law known as the Masters and Servants Acts 1823 – 1867 “neither expressly excluded nor expressly included domestic servants” (Albin 2013). In Kitchen v Shaw 1837 the court held that, even when an Act was stated to include ‘any other person’ in addition to the sectors listed, it was not part of its intention to include a domestic servant. However, that sector of work had been subject to legal regulation for several centuries and magistrates dealt with cases of domestic servants who turned to the courts with their various claims and requests for acknowledgment of contractual entitlements.

Separation between domestics and other groups of workers gradually increased with the adoption of later legislation and this changed the legal status of domestic servants. They became a precarious legal category as unionized collective bargaining developed (Albin 2013, 236-7). Thus, when domestics were excluded from the criminal sanctions of the Masters and Servants Acts they were exempted also from protective legislation such as the Truck Act, 1831. The category of ‘domestic servant’ was specifically excluded from the scope of the Employers and Workmen Act of 1875. Worker-protective Acts such as the Employers Liability Act 1880, Shop Hours Act 1892, the Unemployment Insurance Act 1920, and the Factory and Workshop Acts excluded
Employment Law Focusing on the Rights of Domestic Workers

tasks done by domestics. The Workmen’s Compensation Acts of 1906 and 1925 excluded casual workers who were employed otherwise than for the purposes of the employer’s trade or business.

The placing of workers in households or other small establishments outside legal scope caused domestic servants to be disadvantaged. Although British labour law adopted a unitary regime in the 1960s whereby the distinctive categories of “workmen”, “employees” and “domestic servants”, all became “employees” under the modern contract of employment, domestic workers were entitled to a very limited set of worker-protective rights (Albin 2013, 241). The Equal Pay Act 1970 and the Health and Safety at Work Act 1974, s 51 offers few protections to domestic workers.

The National Minimum Wage Bill was introduced into the House of Commons November 26, 1997 and received Royal Assent on July 31, 1998 (David Medcalf 1999). The Department of Trade & Industry Draft Minimum Wage Regulations (URN 98/885) did little to benefit domestic workers. The Working Time Regulations, 1998 excludes domestic servants in private homes from coverage regarding maximum weekly working time and restrictions on the patterns of work that can be set by employers when there is risk to the health and safety of a worker. Regulations 2(2) and 2(3) of the Minimum Wage Regulations, 1999 of the National Minimum Wage Act, 1998 exempt family members and those living within the household who are not family, but work in the household or for the family business, from the scope of its protection. The provisions of the Equality Act 2010 offer no benefits to domestic workers.

The legislation of Barbados, Guyana, St. Vincent and the Grenadines, and Trinidad and Tobago might be thought of as following the UK model in constituting the legal
category variously termed “domestic employees’, “household service workers”, “domestic workers” and “household assistants” while not specifying a contract of employment for this group. Yet, the introduction of laws on the employment rights of domestic workers shows an effort to recognize and expand legislative protection to this category of workers.

1.9 Other Sources of CARICOM Legislation for Domestic Workers

Legislation in force in CARICOM Member States guaranteeing the employment rights of domestic workers was enacted primarily in the period between 1961 and 1991. While all Member States do not have domestic worker legislation these jurisdictions do have good examples of forward thinking policies and legislation that have been used to advance the cause of attaining employment equity for all workers.

Modern legislative intervention in the sphere of employment and labour law substantively began in the post colonial Caribbean after 1938 in response to the recommendations of the Moyne Commission. During the ensuing decades an extremely symbiotic relationship between political parties and trade unions bore substantial weight in labour relations practice, and legislative advances drew on varied formal and informal sources to respond to the particular context and needs of the region. Thus, although countries of the Commonwealth Caribbean operate mainly on the common law legal system inherited from England, in addition to these common law principles employment and labour law has emerged out of custom and practice, collective agreements, workplace policies, judicial and non-judicial bodies. Recently, employment law in CARICOM has been influenced by international commitments to gender equality in the labour market and other spheres of life.

Membership in regional and international institutions has also influenced thinking on labour and employment law at national level. Emerging independent states in the Caribbean had hastened to seek membership within the United Nations system and

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other international bodies. Most CARICOM Member States\textsuperscript{20} are full members of the International Labour Organisation (ILO). Its principles resonated with the deepest worker aspirations to which political parties and trade unions were committed. As such the Conventions of the International Labour Organisation and its technical support have helped to shape the provisions of employment and labour laws in the Caribbean.

During the 1960s the International Labour Office provided strong technical support to Jamaica, Barbados, Trinidad and Tobago, and Guyana to draft and administer their Social Security and National Insurance legislation\textsuperscript{21}. CARICOM’s 1995 Declaration of Labour and Industrial Relations principles, and its 1996 Agreement on Social Security have been influenced by the participation of Member States in the ILO. It is not mandatory to ratify ILO conventions however Members are bound to uphold their core human rights principles. Commonwealth Caribbean countries have been ratifying ILO Conventions since 1963\textsuperscript{22}.

The International Labour Organisation (ILO) was established as part of the agenda of the 1919 Paris Peace Conference and given full effect by Part 13 of the Treaty of Versailles. Its nine-point Labour Charter includes the principles of equal pay for equal work and equitable economic treatment of all workers. The ILO 1944 Declaration of Philadelphia embodies the following principles:

1. Labour is not a commodity
2. Freedom of expression and association are essential to sustained progress
3. Poverty anywhere constitutes a danger to prosperity everywhere
4. All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development, in conditions of freedom and dignity, of economic security and equal opportunity.

The ILO conventions are international treaties that are open to ratification by ILO member states, of their own free will. These conventions are universal in character.

\textsuperscript{20}St. Lucia and St. Vincent and the Grenadines are not listed as members of ILO. These countries do benefit from the organisation’s activities.
\textsuperscript{22} See Leith Dunn’s Women and Work, Appendix 2: Caribbean Ratification of ILO Conventions
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and developed through dialogue and consensus between governments, trade unions and private sector groups in a spirit of realism and effectiveness so that they can be applied to countries at various stages of development. Core labour standards are not directly enforceable but they have the potential of being important elements in international and regional trade. In 1998 the ILO adopted the Declaration on Fundamental Principles and Rights at Work. All ILO member countries have an obligation to respect, promote and realize this declaration. In addition to developing declarations, conventions and recommendations the ILO has a range of gender mainstreaming measures to promote gender equality in the workplace. Its own ILO Bureau for Gender Equality was established to implement its gender action plan and gender-specific tools and indicators have been produced and disseminated.

Arising from its earliest declaration of principles, its commitment to gender equality, and promotion of human rights, the ILO advances the concept and practice of Decent Work. This is the ultimate standard that all members should aspire to achieve in the treatment of workers. The Convention on Decent Work for Domestic Workers which was adopted at the ILO annual conference in 2011 is an example of how the organisation works to promote employment equity for all workers.

2. GENDER, COMMONWEALTH and C189 GAP ANALYSIS

The adequacy of the provisions of employment laws focusing on the rights of domestic workers in CARICOM Member States can be appraised from three main standpoints; from the perspective of gender equality, the legal guarantees in other Commonwealth jurisdictions, and the more recent provisions of the ILO C189. The analyses will proceed in that sequence. The gender equality approach is chosen to satisfy outcomes of IMPACT Justice Project. The Commonwealth approach is relevant to legal practice in CARICOM, and the C189 is the best standard available for domestic workers.

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CARICOM Member States subscribe to the principles of universal human rights and through membership in the United Nations system have participated in global dialogues and signed international conventions that seek to advance economic justice, social equity and gender equality. Consistent with the region’s emancipatory thrust, policy and legislative reform have been undertaken at national and regional levels to give effect to these commitments. In the employment and labour sector the principles of human rights, gender equality and decent work operate to progressively improve the working conditions and treatment of all categories of workers.

**Human rights** are rights inherent to all human beings, regardless of nationality, place of residence, sex, ethnic origin, colour, religion, language, or any other status. Everyone is equally entitled to personal human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed in the form of treaties, general principles, customary and other sources of international law. International human rights law lays down obligations for Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

**Decent work** sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families. Decent work allows employees better prospects for personal development and social integration, freedom to express their concerns, organize and participate in the decisions that affect their lives. Decent work is a practical expression of equality of opportunity and fair treatment for all women and men. The practice of Decent Work manifests the principles of human rights and gender equality and democracy in the workplace to address the total life of the worker.

**Gender equality** refers to the equal rights, responsibilities and opportunities of boys, girls, men and women. Equality does not mean that women and men will become the same but that women’s and men’s rights, responsibilities and opportunities will not depend on whether they are born female or male. Gender equality implies that the

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interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a woman’s issue only, but should concern and fully engage men and women. Equality between women and men is both a human rights issue and a precondition for, and indicator of, sustainable people-centered development\textsuperscript{28}. Gender equality enhances human potential to contribute to cultural, economic, environmental, social, and political national development and enables women and men to benefit equitably from the results. Gender equality means that boys, girls, men and women have the same status and equal opportunity to exercise their full human rights.

**Gender analysis** identifies the varied roles of boys, girls, men and women in the household, community, workplace, political processes and economy. This analysis reveals the extent to which men and women have access to and control over both material and non-material resources, are able to participate in personal as well as public decision-making and have guaranteed human rights. The information obtained from gender analysis assists in the planning and designing of initiatives that are aimed at contributing towards achievement of gender equality.

### 2.1 Gender Analysis of Domestic Workers Employment Rights Laws

Gender analysis of employment laws focusing on the rights of domestic workers in CARICOM involves examining their provisions to assess how they promote equal outcomes for domestic workers with other workers in the labour market. The analysis probes for underlying assumptions and language that give visibility, ascribe economic value, and determine productive earnings of domestic workers. The analysis deploys gender concepts such as the sexual division of labour; practical needs and strategic interests; general health, sexual and reproductive rights; and influencing factors to evaluate whether the laws as currently framed are gender-equitable. These concepts though individually stated here are dynamically inter-related and overlap at many levels and dimensions of analysis. It is almost impossible to discuss one concept

\textsuperscript{28} UN Women [http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm](http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm) accessed April 18, 2017
without engaging the other concepts. The analysis is used to identify strengths as well as to reveal gaps of the legislation in force.

Language of Law

The domestic worker legislation in force in Barbados, Guyana, and Trinidad and Tobago conform to the legal formality of using the masculine pronoun for employee and employer. The laws, as framed, do not admit to the possibility that either or both persons could be female. Encased in this formulation is the gendered notion that man includes woman and that the legal person is male. The very comprehensive subsidiary instrument of Trinidad and Tobago uses male pronouns, but avoids the absurdity of granting “him” maternity leave and is able to make “her” the recipient. That is, the law can recognize the female domestic worker. The St. Vincent and the Grenadines Order of 2003 does not use any personal pronouns and provides maternity leave for a “worker”. In this instance the law constructs a uniform genderless “worker” or “person” who can however become pregnant and obtain maternity leave. The legislation of Barbados and Guyana do not contain any maternity leave provisions.

The four statutes and subsidiary instruments under review conform to the older legal construction of women not being properly, “persons”; of man being vested with citizenship, of man embodying women. This masculine formulation of law obscures the socio-cultural characteristics of domestic work and hinders inclusion of provisions that promote full employment rights for women. Regional popular consciousness does not fathom men as domestic workers even when they may be employed cleaning the yards and grounds of private residences. Admittedly, at that time, there may have been men functioning as household servants but the overwhelming number of domestics would have been women. That was the reality when these laws were enacted and remains so today. In the Caribbean, domestic work is women’s work, whether it is done in one’s household or in the residence of an employer. The study conducted in Antigua found all domestic workers to be women. The study sample of 100 in Barbados included 7 males.

The four laws under review were progressive advances intent on guaranteeing civil rights and protections of domestic workers. The laws made a historical break with the colonial mentality of “servants” and constructed “employees” providing services to

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29 In Barbados 98% of maids and domestic service workers were female. Report of the National Commission on the Status of Women in Barbados, 1978 Volume I p.199
households. The law, in its progressive intent, was able to redefine class relations but by conforming to the masculine language stopped short of promoting gender equity. The laws rendered women invisible in an employment sector where they are numerically dominant.

It is counter intuitive for legislation to continue to cast domestic workers solely in a male persona. The Barbados Constitution Review Commission 1998 acknowledged that law’s masculine pronouns made women invisible and recommended the use of ‘he/she, her/him’ as a first step to correcting this injustice. In 2000 the Belize Political Reform Commission recommended more inclusive language. The Caribbean jurist Tracy Robinson (2004, 599) has noted that in many Caribbean constitutions “as a matter of legal interpretation and, frankly, contrivance, the masculine references are said to include women”. The law should use both female and male pronouns in order to recognize, uphold and protect the full employment rights of the domestic workers. Gender equality legislation is already in force throughout CARICOM Member States and the CARICOM model legislation on Occupational Safety and Health in the Working Environment Act enshrines the legal persona to female domestic workers.

\textit{Ascribed Economic Value of Domestic Work}

The Minimum Wages stipulated in the laws being reviewed impute little economic value to domestic work. These wages are shown below:

- Barbados $1.50 per hour in 1982;
- Trinidad TT$150.00 per week of 44 hours in 1991;
- Belize $2.25 per hour in 2003;
- St. Vincent EC$50.00 per week day in 2003; but EC$20 for day to day work
- Grenada EC$35.00 per week of 4 days or less in 2011; EC$725.00 per month;
- Guyana GY$ 255.00 [US$1.50] per hour in 2017

The concept of a Minimum Wage is accepted international employment practice signifying a protective floor below which wages cannot fall. It is designed to shield workers by ascribing a value to their work which employers may elevate but not undermine. The low wages of domestic workers, low status of domestic work, and
pervasively dismal conditions of employment\textsuperscript{30} signify denial of the real value of services provided to the household. This undermines the dignity and human rights of the service providers.

Domestic work is given the least economic value in the labour market because of the ideology of gender inequality that ascribes superior status to man, his needs, actions, thoughts, products and interests. Maleness has also been projected as superior intellectually, psychologically and, not infrequently, spiritually and morally\textsuperscript{31}. Men’s activities are automatically classified as more valuable. Work is demarcated as the domain of men and ascribed higher economic use value in the labour market. This use value is equated with cash payment and masculine status. The value of men’s work is also determined by status considerations of race, class, age, religion, education among other variables. Through higher incomes, the labour market has operated to favour men’s accumulation of capital, ownership and control of wealth, and the ability to spend a larger portion of their incomes on themselves.

The ideology of gender inequality ascribes a lower status to woman and to everything associated with her. The low use value of household services provided in the homes of employers closely mirrors the exchange value imputed to the unpaid services provided by women in their own homes, where it is taken for granted. The care giving work of women that is inherent to the normal functioning of a household is classified as “labour” done for love, outside the realm of market use values\textsuperscript{32}. The ascribed economic value of domestic work remains low because the ideology of gender inequality does not classify care services provided in the household as work and deny women adequate remuneration for their services.

Women’s unpaid household domestic services are not thought to be without value. Simply, these services are classified as “invaluable” i.e. outside the sphere of payment with money. The legally admissible claim of loss of consortium\textsuperscript{33} in which cash can be

\textsuperscript{31}Mark Figueroa. “Gender Privileging and Socio-Economic Outcomes”. Conference Paper, Gender and Family in the Caribbean
\textsuperscript{33}Damages for Loss of Consortium cover the losses a spouse experiences when a partner is injured. These damages usually fall into one of three categories: damages for loss of services, damages for loss of
awarded for loss of a woman’s services in the home exposes the artifice of this system of inequality. This contrivance illuminates Herman Daly and John Cobb’s question “which of the activities of the household should be classified as work as opposed to leisure or an intrinsically satisfying activity?” Family law and tort law already recognize the indispensible use value of household services.

Feminists have long advocated and proposed methodologies for the revaluation of women’s household services. Economist Duncan S. Ironmonger analyzed household input-output statistics in Australia in 1992 and found that the household accounted for 48% of national production. Ironmonger found that the household economy is the system that transforms intermediate commodities provided by the market economy into final items of consumption through the use of its own [women’s] unpaid labour and its own capital goods. The survival of [hu]mankind has been due much more to ‘woman-the gatherer’ than to ‘man-the-hunter’.

Considerable progress has been made within the human rights framework towards according equal status to women and men through legislation. Although historically constructed inequalities of race, class and gender relations in the Caribbean remain sufficiently ingrained as to deny domestic workers competitive economic use value for services which are essential to maintain human life, the market value of domestic work must be elevated to stop the exploitation of the labour of women. Domestic workers have a human right to fair value for their work and legislation has a pivotal role in setting the standards for society.

It is recommended that legislation in force advance gender equality by setting a Living Wage for domestic workers in order to impute their household services with its true cultural, economic, social and human development values. A living wage is calibrated to keep pace with the cost of living or consumer price index and to maintain one’s support, and damages for loss of quality in the ‘marital relationship’. The British publication Kemp and Kemp’s Quantum of Damages lists settlements made in English Courts.


34 Daly and Cobb, For the Common Good, p457 quoted in Counting for Nothing by Marilyn Waring.
standard of living above the basic minimum. Legal provision of a Living Wage for domestic workers would unlock the encasement of household services in exchange value only and acknowledge its use value, social capital value, and GDP value.

Access to and Control over Material and Non-Material Resources

Wages, income, earnings, salary in the form of money constitute a resource in western society that is a major determinant of one’s status, condition and quality of life. Adequate income is a primary material resource to which women and men must have access and a degree of control over in order to live a life which is worthwhile. Control of income is a core dimension of women’s economic empowerment and one of the indicators of human capability promoted by the UNDP.

Domestic workers as a group experience restricted access to and control of material resources such as money due to the low wages that they are paid. Low wages force these women to work many extra hours to meet their daily needs, and yet be unable to do so adequately. These low wages establish a causal chain of economic vulnerability, restricted personal development, unsatisfactory survival conditions, eroded health and persistent poverty. Domestic workers need better access to income resources in order to sustain their human capability and raise their quality of life above the vulnerability line. Domestic workers can be made to benefit equitably from their valuable labour through the mechanism of a Living Wage.

Non-material resources inclusive of education, health care, legal rights and bargaining organizations provide domestic workers with more choices and better life chances. Limited educational attainment predisposes domestic workers to this low status low-waged sector of employment. Long hours of work circumscribe opportunities for self improvement through additional skills acquisition while injuring their health. Knowledge of their human rights, effective national enforcement of these rights, and support for exercising legal rights through use of the judicial system to redress violations are non-material resources that domestic workers feel barred from their reach.

Domestic workers can be provided improved access to non-material resources through the enactment of comprehensive legislation that safeguards all aspects of their human rights, supports their participation in decision making in matters that
affect their time, and validates their work experience through specially instituted mechanisms.

**Sexual/gendered Division of Labour**

The allocation of unpaid work within the household to women, and of paid work performed outside of the household to men, constitutes the hierarchical gender division of labour in society. The gender division of labour attributes differential status to work, determines the remuneration attached, and generates the attitudes held towards different types of work. The gender division of labour also informs societal expectations of the sectors in which women and men should work, how the work should be performed, the amount and intensity of work that should be done by men and by women.

The legislated number of hours of work for domestic workers (women) was reduced in Guyana from 48 hours over 6 days during the 1980s to 40 hours over 5 days in 2016. The Barbados law set a 44 hour week in 1982 and afforded the domestic worker only two rest periods of 24 consecutive hours each per month. In the period 1989 - 1991, St. Vincent and the Grenadines and Trinidad and Tobago opted for the 44 hour week spread over 5½ to 6 days respectively. All of the laws specified rates for overtime, which was ostensibly at the discretion of the domestic worker.

Domestic work is officially classified as unskilled, low paid, without prospects for mobility. Employment is based on experience and recommendations. Longevity in the job is premised on the domestic worker’s willingness to cope with new demands, take on more tasks at a moment’s notice and spend as many hours at work as is convenient for employers. Domestic work has such low status that employers often do not associate labour and employment legislation in force with their employees. "Women’s participation in the labour force remains unequal”[^37].

Domestic work is still typically women’s work due to the gender ideology that cast women primarily as nurturers, who ought to care virtuously for men, children, the

elderly, sick, disabled, families and communities. As women, domestic workers also have primary responsibility for care giving at home along with working 8 tedious hours a day. Overarching historic privilege has exempted men from many household tasks and despite significant shifts in gender roles in the Caribbean “the more fundamental gendered division of labour has not changed”\(^{38}\). In the past four decades Caribbean men have become more involved in the lives of their children but have not increased their participation in household tasks. The domestic worker and her female employer are bound by the gender privileging that delineates hours of work for men while leaving women’s hours of work elastic. Unlike most professional men with families, women seeking to advance their career and social profiles remain tethered to household responsibilities. They rely heavily on the domestic worker to shoulder much of that burden. There is always need for domestic workers to care for families other than their own.

One of the expressions of gender inequality in the division of labour between men and women is that on average women work more hours on a daily basis and are responsible for a greater multiplicity of tasks. The Time Use Survey\(^{39}\), a tool that has been used globally since the 1960s, measures how men and women allocate their daily time among household tasks. The Time Use Survey confirms observable differentials between women and men in the number of hours of worked daily at different stages of the life cycle. Use of this tool in Caribbean research projects spotlighted women’s triple roles in unpaid family reproduction, unpaid voluntary community service, and production in the economy subject to a gender pay gap. Continued use of the Time Use Survey at household level has shown that with improved standards of living, labour saving devices have reduced the time required to fulfill certain household tasks but have not eliminated them for women.

The hours set in the legislation on the employment rights of domestic workers conform to prevailing patterns of the number of hours worked among manual workers. In stipulating work hours the laws seek to prevent the imposition of

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39 The Women in the Caribbean Project implemented by the Institute for Social and Economic Research, Cave Hill Campus, UWI 1979- used a variant to ask respondents to itemize their activities in the 24 hours prior to the interview and identify which of these activities they consider to be work. CAFRA’s Women in Agriculture project, 1986, also modified the Time Use Survey to the realities of the Caribbean context.
excessively long days and to balance hours worked with remuneration. This legal provision is significant in light of the contraventions detailed by domestic workers regarding imposed additional tasks and extended hours at no additional pay. Excessive hours of work constitute an abuse that is predicated on women’s care giving gender role. It is also a class bias that privileges the employer’s family over that of the domestic worker. Mechanisms for effective enforcement of hours of work provisions should be instituted so that the law will be beneficial to domestic workers. The periods of rest provided in the Barbados legislation should be on a weekly basis.

Practical Needs and Strategic Interests

Practical needs include affordable nutritious food, water for health and sanitation, clothing and shelter, and other survival prerequisites. In the context of the workplace, there are some practical needs that hinge on respect for the dignity of the domestic worker. Protective clothing, access to sanitary toilet facilities, a decent place to take lunch and rest breaks, privacy of telephone conversations, cash transport subsidy or pick up at the bus stop are practical needs. They also include opportunities for personal growth such as employer sponsored training or time off for this pursuit. It could also mean learning to use new equipment or new techniques on the job, a clear job description and scheduled or merit increases.

Strategic interests relate to the human rights of individual domestic workers at the workplace. These include the right to be treated with respect and fairly; to be safe on the job; and to be free from suspicion of stealing, non-performance of their duties, or indiscretions. Domestic workers also have a strategic interest in being safe from dogs or the suspicion of security guards and residents while traversing areas where they work. They have a human right to be able to decide on which additional tasks they will undertake, to limit extended hours or increases in the number of households and employers to be serviced. Domestic workers have a strategic interest in balancing their work lives with personal time for leisure and family.

The strategic interests of domestic workers as a sector encompass the potential for mobilization to counter injustice and to be consulted in decisions about economic policy such as minimum wage, hours of work or the amount of work to be done during a working day, and the number of employees required for specific sizes of residences.
It is recommended that all employment rights legislation include domestic workers in their interpretation or application as appropriate and that enforcement mechanisms be written into the regulations. Any legislation enacted specifically for domestic workers should reference provisions in the various laws already in force which address the practical needs and strategic interests of these workers.

*General health, sexual and reproductive rights*

Cumulatively the 4 laws reviewed contain provisions that conduce to the general health and well being of domestic workers. All the stipulated time off: daily rest periods, meal breaks, public holidays, weekends, certified sick leave, annual vacation, maternity leave support the physical, psychological, and reproductive health rights of domestic workers. However, there are no provisions for sexual health rights that protect domestic worker from danger to their physical safety and sexual integrity at the workplace.

In Guyana, the Sexual Offences Act 2010 (No. 7 of 2010) in its interpretation, offences and evidential presumptions offer a level of protection or recourse regarding unwelcomed sexual advances. In Belize, the Protection Against Sexual Harassment Act (CAP.107) directly serves this purpose. Other countries researched do not have such legislation.

It is recommended that consideration be given to family leave to attend to sick family members, visits to anti and post-natal clinic, and bereavement for stillbirth and other deaths. Breast feeding periods on the job should also be considered. Legislation should be enacted to prevent sexual harassment and assault as well as other physical harm at the workplace.

*Influencing Factors/Condition and Position*

Essentially, domestic workers are engaged in a public relationship within a private sphere. This peculiarity renders the workplace to be of an intimate nature, isolating the domestic workers from other workers and the public, and making them invisible to industrial relations and national policy. Most domestic workers come from lower economic circumstances and are vulnerable to abuse because they are perceived as having low social status that limits their access to legal protection.
Domestic workers report being slapped, sworn at, and accused of stealing. Some have been ordered to leave premises then be accused of walking off the job. Migrant workers are often vulnerable to uncertain access to social services and some are at risk due to undocumented status. Abuse of domestic workers by employment agencies was reported in three countries. Domestic workers have been found to be among the most exploited in the labour market – under-waged, undervalued, uncounted and unprotected. The low wages set by employment laws reinforce this status. It is recommended that legislation encompassing all the human rights and decent work principles and having mechanisms of enforcement be enacted.

Summary

The dynamically multilayered and interrelated concepts and indicators used have shown the complexity of gender analysis. It found that most of the legislation reviewed contains excellent guarantees that conduce to the general health and well being of domestic workers but falls far short of measures for preventing or punishing all forms of verbal abuse, physical violence, sexual harassment and economic injustice. Labour officers are not able to make routine checks in the manner done by health inspectors.

The laws examined were reflective of the low economic value given to women’s work. Ascribed economic value is influenced by the gender division of labour that determines access to resources and impacts on the satisfaction of practical needs that define women’s living conditions. This confluence of influencing factors affects the domestic workers’ general health, sexual agency and reproductive autonomy; as well as decision making in public processes. This relationship highlights strategic interests that should be addressed to equalize women’s position in society relative to men.

The gender analysis revealed a number of practices, assumptions and ideologies embedded in the legislation in force that perpetuate gender inequality and need to be removed. The four laws examined were found to efface the reality of women’s presence in the domestic work sector of employment. Legal language that masks the sex and gender of domestic workers will fail to fully grasp and protect their human rights. This practice should be discontinued especially as laws have been passed in CARICOM which recognizes women as legal persons. The legislation on the employment rights of domestic workers needs to come on par with other laws that already recognize women’s presence in the work force. This is one means of achieving workers rights, equal status and responsible freedom in the workplace.
Lack of knowledge of these laws by domestic workers and lack of enforcement mechanisms allow an undue burden of care work to weigh on these women who are segmented into this low-waged employment with little or no prospects of mobility. This economic and social disadvantage undermines their human rights, dignity, material and spiritual well being. The low value of women’s domestic work, rooted in the ideology of gender inequality, should be redefined to reflect its essentially life producing and life sustaining worth to human beings, the society and nation. The law can be made more comprehensive in order to articulate fairer terms of employment and decent conditions of work, protection of domestic workers and effective methods of enforcement.

2.2 Mapping CARICOM and Other Commonwealth Laws

The statues of other Commonwealth countries have often been a source of legal thinking for CARICOM Member States. An attempt was made to find out whether this precedent may have informed legislation in force for domestic workers in CARICOM. No legislation was found for domestic workers in the commonwealth countries of Great Britain, Australia or New Zealand. Legal provisions were found for the provinces of Alberta and British Columbia (Canada), for South Africa and for Ireland. Outside the Commonwealth, the Domestic Worker’s Bill of rights was also found in four states of the USA.

The research revealed that CARICOM Member States had enacted their laws between 1961 and 1991 and the other Commonwealth jurisdictions had done so between 1992 and 2007, and USA states 2010-2014. CARICOM legislation predated Zimbabwe Chapter 28:01 Labour (Domestic Workers) Employment Regulations 1992; South Africa Sectoral Determination 7: Domestic Workers Sector 2002 of the Basic Conditions of Employment Act No 75 of 1997; Ireland’s Code of Practice for Protecting Persons Employed in Other People’s Homes (2007), and New York State’s 2010 Domestic Workers Bill of Rights. These dates suggest that precedents in other jurisdictions are unlikely to have been the source of thinking for the legislation of CARICOM Member States.

St. Vincent and the Grenadines had first passed its Wage Regulations (Domestic Workers) Order 1989 (No. 12 of 1989)
Zimbabwe was suspended from the Commonwealth March 2002, and left the Commonwealth December 2003
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States. However, it was useful to map the provisions of the two sets of laws in order to identify any additional provisions that may be instructive to CARICOM jurisprudence.

The South Africa 2002 Sectoral Determination7: Domestic Workers Sector of the Basic Conditions of Employment Act No 75 of 1997 came into force to establish conditions of employment and minimum wage specifically for domestic workers. Ireland does not have a separate law for domestic workers because under Irish law all legally employed domestic workers have the same rights and protections as any other worker. However, Ireland’s Code of Practice for Protecting Persons Employed in Other People’s Homes (2007) was instituted to increase awareness of the application of all relevant legislation, enforce compliance with the law and to encourage good practice within that sector. Information materials have been produced by the labour divisions in South Africa and Ireland to publicize their provisions.

The Canadian provinces of Alberta and British Columbia do not have legislation specific to domestic workers but each provincial government has published guides in order to highlight relevant legal provisions to employers and employees. Alberta’s guide explains two statutes that apply to domestic employees: the Minimum Wage provisions of the Employment Standards Regulation, Alta Reg. 14/1997 and the Employment Standards Code RSA 2000 Chapter E-9 revised 2010 and 201443. The British Columbia Employment Standards Act (ESA) 1980 is the most important provincial law protecting the employment rights of domestic workers and caregivers in the [immigration] Live-In Caregiver Programme. The Act sets minimum standards for wages, hours of work, holidays, and other working conditions.

New York State’s Domestic Workers Bill of Rights amends three existing laws44 to protect workers from harassment based on sex, entitle domestic workers to overtime pay and extend disability benefits to domestic workers who work less than 40 hours per week. The Bill of Rights applies to all domestic workers, including those who may be undocumented. Information sheets in simple language have been published so that domestic workers may become knowledgeable of their employment rights. New Jersey and Massachusetts have replicated the Domestic Workers Bill of Rights.


The mapping of laws in other Commonwealth states such as Canada, Ireland, South Africa to legislation in force in CARICOM mainly highlights additional provisions that could be included in any reform exercise. Legislation in force in New York State is included to obtain a wider geographic and temporal spread. Separate attention is drawn to provisions in force in Zimbabwe that go beyond the legislation compared.

Terms and Definitions:

Terminology outside of CARICOM is less diverse. Barbados and Alberta both use the term “domestic employee”. Others jurisdictions use “domestic worker”, which is found only in the statutory instrument of St. Vincent and the Grenadines. All definitions stress care-giving and domestic services. Definitions are quite similar in South Africa and Zimbabwe in their inclusion of work done in the yard of a dwelling house; a feature not found in Ireland, New York State, Alberta or British Columbia. The latter has the distinction that a domestic worker resides in the residence of employers.

In Zimbabwe's legislation “domestic worker means a person employed in any private household to render services as a yard/garden worker, cook/housekeeper, child minder, qualified sick persons-minder or disabled/aged-minder, irrespective of whether or not the place of employment is in an urban or rural area”. In South Africa “domestic worker means an employee who performs domestic work in the home of his or her employer and includes a gardener, a person employed by a household as driver of a motor vehicle, a person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker”.

Ireland’s employment laws define a worker as someone who works under an employment contract while the factsheet of its Workplace Relations Commission uses the ILO definition of domestic worker. New York State’s Bill of Rights defines a domestic worker as a "person employed in a home or residence for the purpose of caring for a child, serving as a companion for a sick, convalescing or elderly person, housekeeping, or for any other domestic service purpose". The British Columbia two-page guide states that a "domestic" means a person who (a) is employed at an employer’s private residence to provide cooking, cleaning, child care or other prescribed services, and (b) resides at the employer's private residence. Alberta’s factsheet explains that, “a domestic employee is a person employed to do work in the
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employer’s residence, for the care, comfort and convenience of members of that residence”.

2.2.1 Provisions not contained in CARICOM Domestic Workers Laws

Legislative provisions for domestic workers are not as extensively detailed in a single law in CARICOM Member States as are those of Zimbabwe, South Africa, Ireland, or New York State. Many of the provisions contained in these later statutes, may be found in other legislation in CARICOM. A few provisions included in the legislation reviewed for Commonwealth and US jurisdictions are presented below to demonstrate the expanded thinking on the employment rights of domestic workers.

Provisions on Wages: Minimum wage and/or overtime rates of pay are provided in the laws of CARICOM for domestic workers. South Africa’s 2002 Sectoral Determination 7 includes the following additional details in one law:

- annual wage increase
- calculation of wages
- payment of wages
- information concerning pay
- prohibited acts concerning payment of wages
- deductions

The percentage annual wage increase is stipulated and tied to the Consumer Price Index. Wages are to be paid on the normal pay day agreed by the domestic worker. Deductions are forbidden for breakage of items, meals, lodgings etc. Special provisions are detailed regarding pay for work done on a Sunday. Time off in lieu of pay is an option.

The New York Bill of Rights stipulates payment each week, Alberta does not treat with day of payment, and the British Columbia law allows the employer a grace period of 8 days in relation to the agreed pay day. Zimbabwe stipulates pay within 3 days of due pay day but within 24 hours on termination. Part-time workers must be paid double the hourly rate.

Alberta and British Columbia set a bar on the amounts that domestic workers may pay for meals and lodgings. New York’s minimum wage law gives employers a credit
towards meals provided. Only statutory deductions and union dues are allowed in the laws reviewed. None of the above issues are contemplated in laws of CARICOM.

Contracts and Particulars of Employment: the Trinidad and Tobago Order requires the employer to set out in writing the duties, hours of work and rest periods at the time that the household assistant first assumes duty. Guyana and Barbados require the employer to keep records. St. Vincent and the Grenadines is silent on this provision.

The other statutes examined require the employer to keep records but also to provide the employee with details of employment in a language that the domestic worker understands, and a wage slip at each payment. South Africa’s legislation and the New York State Bill of Rights require the employer to make the legislation accessible to the employee.

Family Leave: CARICOM statutes provide for maternity leave, annual vacation, sick leave, public holidays, and weekly off-duty periods. South Africa adds an annual 5 days of paid leave to attend to family responsibility. This leave cannot be accumulated. The law in Alberta includes family leave with other types of leave but does not specify whether it is paid or unpaid. British Columbia allows the Live-In Caregiver almost any leave requested unpaid. Maternity leave is 4 months in South Africa.

Dignity and Privacy: Ireland’s Code stresses the employer’s obligation to respect: the dignity and privacy of the domestic worker, free exercise of personal pursuits, trade union membership, and non-discrimination on the basis of sex among other factors. The New York Bill of Rights prohibits sexual and other forms of harassment. These explicit provisions are not contained in the laws of Alberta, British Columbia and South Africa, Zimbabwe or CARICOM.

Certificate of Service: South Africa entitles a domestic worker, upon termination, to proof of employment experience through the issuance of a Certificate which must indicate any training that may have been received and, if the domestic worker desires, the reason for termination. A Record of Service is found in the legislation of Zimbabwe.

Other provisions addressed by at least one of the laws reviewed: transportation allowance; occupational health and safety; health insurance, unemployment and retirement benefits; minimum wage according to age and experience; and the right to retain possession of personal documents, registration of employment by the domestic worker or employer.
Offences: As in the law in Guyana and Barbados, Ireland’s Code and New York State’s Bill of Rights creates an offence for non-compliance with its provisions. British Columbia and New York do not create an office within the legislation but provide a mechanism for making and filing complaints, as does Ireland. Only British Columbia has a limitation, of six months, on filing complaints.

The South Africa law prohibits certain acts in relation to the domestic worker’s pay, forced labour, and child labour but does not create any specific offences with penalties. The legislation in Zimbabwe does not specifically create offences with penalties although many acts are prohibited.

2.2.2 Zimbabwe Labour (Domestic Worker) Employment Regulations

Zimbabwe Chapter 28:01 Labour (Domestic Workers) Employment Regulations 1992

This statutory instrument contains a few additional provisions to those reviewed for Canada, Ireland, South Africa and New York.

Grades: domestic work is graded according to main duties and minimum wages are stipulated. Domestic workers can be promoted to higher grades. The law prevents any form of reduction in wages, e.g. where the domestic worker is present and willing to work but the employer fails to assign duties. A full time employee cannot be assigned to task, piece or ticket work within her or his normal hours. Lodgings, meals, light and fuel for Live-In domestic workers are free. The law contemplates transport allowance for the domestic worker that does not Live-In. Protective clothing is free and becomes the property of the domestic worker after 3 months.

Breastfeeding and days off: 1 hour daily for breastfeeding a child; at least one and a half days off per week for domestic workers who do the 49 hours per week exclusive of rest breaks; double time off for working on a public holiday; work on a public holiday cannot stand in place of a regular day’s work.

Sick Leave: a worker is entitled to 26 days certified sick leave per year. If the domestic worker becomes sick on the job he or she is entitled to be provided with a place which is suitable for a medical examination to be conducted.
Notice of termination: mutual notice must be given for a period within the interval separating two pay days. The worker is exempted from the notice provisions when unable to do so due to an emergency.

Gratuity: a gratuity must be paid to any employee terminated after 5 years service, if the employer had not registered the worker in the Pension and Provident Fund (1976) or a gratuity scheme.

Summary

It is noted that the laws on the employment rights of domestic workers in the Commonwealth and USA were enacted at a later period than those of CARICOM and they would have benefited from some of the global human rights dialogues of the decades in which they were drafted. There are thirteen areas in which the domestic worker legislation in CARICOM could be improved if the laws that were mapped are used as a model. All thirteen areas identified address to some degree a problem or concern that has been raised by domestic workers in one or other of the studies that have been conducted within CARICOM.

2.3 Gap Analysis of CARICOM Domestic Worker Laws and ILO C189

The ILO Decent Work for Domestic Workers Convention 2011(C189) sets out employment standards that apply the principles of decent work to domestic workers. C189 was adopted at the 2011 International Labour Organisation annual conference governments, representatives of the private sector and of workers. C189 defines a domestic worker as any person engaged in domestic work within an employment relationship. Domestic work is work performed in or for a household or households and includes such tasks as house cleaning, cooking, washing and ironing clothes, care of children, elderly or sick members of a household, gardening, guarding the house, driving members of the family and caring for household pets. These definitions were agreed to by the various delegations, including domestic workers, which adopted the convention.

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C189 consists of a preamble and 27 articles. Article 1 relates to definitions while Articles 2 to 17 confer and safeguard rights of the domestic worker. Articles 18 to 27 deal with the processes, administration, and formalities associated with ratification. The main rights granted to domestic workers in C189 include: daily and weekly rest periods as are applicable; entitlement to pay at or above the minimum wage commensurate with the range of duties performed in a given period; protection from all forms of abuse, harassment and violence; safe conditions at work; clarity and agreement on the terms of employment and tasks to be carried out; freedom of choice in the use personal free time; independent possession of travel and personal documents; freedom of association.

This section summarizes the main rights contained in Articles 2 – 18 of C189 and conducts a gap analysis between each article and the provisions of the four domestic worker laws under review. Where possible, note is made of C189 rights provisions that may be found in other employment laws in force in CARICOM, although they are not contained in the four domestic workers laws being reviewed.

- **A Domestic Worker is any person who performs work in or for a household in an employment relationship (Article 1)**

**NO GAP:** The legislation of Barbados, Guyana, St. Vincent and the Grenadines, and Trinidad and Tobago locate domestic work within the household. Legislation in Belize, Grenada, St. Kitts and Nevis, and St. Lucia also do. However, the law in Belize extends domestic work to pension houses and guest houses and in St. Vincent and the Grenadines to educational institutions.

- **C189 applies to all domestic workers (Article 2); except where better protection already exists, or there are special problems with limited categories of workers.**

The legislation in CARICOM protects the employment rights of all domestic workers and do not specify exemptions of any group of domestic workers.

- **Effective State promotion and protection of the human rights of all domestic workers (Article 3)**
**Gap 1:** The laws as framed do not effectively promote and protect the human rights of domestic workers. Many rights are omitted; restrictions apply in respect of labour inspection of private residences; and workers fear to lodge official complaints.

Some gaps in the legislation for domestic worker are filled in the provisions of other national employment and labour laws in force. Provisions for freedom of association, prevention of forced labour and discrimination are addressed in the Labour Code or the Employment Act of some CARICOM Member States. Importantly,


- **The effective abolition of child labour, consistent with the age limits set in national laws (Article 4)**

**Gap 2:** This is not included in the employment legislation for domestic workers.

Barbados has this provision in the Employment (Miscellaneous Provisions) Act (Cap. 346), Guyana has a Schedule: Minimum Age for Employment of Children in its Employment of Young Persons and Children Act (CAP. 99:01). St. Vincent and the Grenadines has incorporated the Employment of Children (Prohibition) Act 1940 into its 1990 revision of the Employment of Women, Young Persons and Children Act (Cap. 209). The Trinidad and Tobago Miscellaneous Provisions (Minimum Age for Admission to Employment) Act 2007 and clause 105 of the Children Act Chapter 46:01 (Act 12 of 2012) makes it an offence to employ a child under the age of 16 years in any public or private undertaking, except one owned and controlled by the same family.

Six other CARICOM Member States have separate laws or provisions in other laws prohibiting child labour.

- **Effective protection of domestic workers against all forms of abuse, harassment and violence (Article 5)**

**Gap 3:** This provision is not included in the legislation for domestic workers. Sexual The interpretation, offences and evidentiary presumption sections of the Guyana Offences Act 2010 (No. 7 of 2010) are invoked regarding prevention and protection from sexual harassment. Belize has the Protection Against Sexual Harassment Act
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(CAP.107). No other CARICOM Member State has legislation prohibiting sexual harassment. Most states do have legislation on domestic or gender based violence.

- *Fair terms of employment, decent working conditions on par with other workers and, if they reside in the household, decent living conditions that respect domestic workers’ privacy (Article 6)*

**Gap 4:** Legislation in force for domestic workers does not contain all the provisions for fair terms of employment and decent working conditions.

Some relevant provisions are to be found in other employment legislation but these are often contravened in respect of domestic workers (see Table 3; and Annex B).

- *Domestic workers are to be informed, preferably in a written contract, of terms and conditions of employment, domicile, duties, duration of contract, normal hours of work, pay, termination of services and repatriation in case of migrant (Article 7)*

**Gap 5:** Employment contracts are not provided in any of the laws in force for domestic workers.

The statutory instrument in Trinidad and Tobago requires the duties, work hours and rest periods of the domestic worker to be set out in writing but does not specify that the worker should receive a contract. The Acts of Barbados and Guyana require employers to keep records of hours worked and payment made to the domestic worker. The legislation of St. Vincent and the Grenadines does not contain any such provision.

Most CARICOM Member States have employment legislation in force providing for written contracts however St. Vincent and the Grenadines Protection of Employment Act 2003 (at 8. (1)) exempts weekly and daily paid workers from this provision. The Grenada Employment Act 1999 requires all contracts of employment to be written. The Labour Act of Belize revised in 2000 and the St. Lucia Labour Code 2006 provides that contracts of service may be oral or written. These laws require the employer to explain clearly the particulars of employment in the oral contract to the worker.
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- **ILO Members to cooperate with each other to ensure effective protection of migrant domestic workers regarding their terms and conditions of employment (Article 8)**

**Gap 6:** This provision is not contained in the legislation in force for domestic workers. There is no CSME or CARICOM Model legislation for domestic workers. The CSME Free Movement granted to Household Domestics is a right to migrate and reside. It does not address conditions of employment.

- **Freedom of domestic workers to decide on whether to reside in employer’s household; no obligation to stay in employer’s household during weekly rest or annual leave; retain possession of their identity documents (Article 9)**

**Gap 7:** None of the four laws in force for domestic workers has this provision.

- **Member States to ensure equal treatment between domestic workers and workers generally in accordance with national laws, for example in relation to week rest and independent use of their off time, taking account of the special characteristics of domestic work (Article 10).**

**Gap 8:** The legislation in force for domestic workers does not contain this provision. In principle, the provisions contained in employment legislation such as the Labour Code, Employment Act, Wage Council Act apply equally to domestic workers.

Trinidad and Tobago had previously excluded domestic workers from the protection of the Industrial Stabilization Act 1965 and Industrial Relations Act 1972. This error was remedied, in part, several decades later in the Minimum Wages Order and in the Maternity Protection Act, guaranteeing domestic workers the same rights and benefits as other workers.46

- **Each Member shall take measures to ensure that domestic workers enjoy Minimum Wage, where coverage exists, without discrimination based on sex (article 11)**

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NO GAP: The domestic workers laws of Barbados, St. Vincent and the Grenadines and Trinidad and Tobago provide a Minimum Wage. Guyana makes this provision in a separate Minimum Wage Act.

- Domestic workers shall be paid in cash at regular intervals at least once a month. The monetary value of a limited proportion of pay in kind must be fair and reasonable (article 12)

Gap 9: None of the laws in force specify cash payment or the payment interval.

Cash payment and interval are provided in the Barbados Employment Rights Act 2012. The Guyana Labour Act, Part IV, makes provisions for weekly, fortnightly or monthly payment intervals. Wages must be entirely in “money’ and it is an offence to pay in-kind. The St. Vincent and the Grenadines Protection of Employment Act 2003 and the Trinidad and Tobago Minimum Wage legislation do not address payment interval or payment in cash. Although the Trinidad and Tobago Truck Act Chap. 88:07 No 23 of 1980 provides for payment of wages entirely in money however, the Act does not apply to “domestic servants”. The Act does not provide payment intervals.

- Each Member shall take ... effective measures, with due regard for the specific characteristics of domestic work, to ensure occupational safety and health of domestic workers (article 13)

Gap 10: The legislation for domestic workers does not contain these provisions.

Domestic workers are protected in the Guyana Occupational Safety and Health Act 1997, and the CARICOM Model OSHWE legislation contains protection for domestic workers.

The following exclude domestic workers: Barbados Occupational Safety and Health at Work Act 2005; St. Lucia Labour Code 2006 exempt “private dwelling homes” from labour inspection. The Belize Occupational Safety and Health Bill 2014 [Interpretation 4 – (2)] excludes the domestic worker from its protection. St. Vincent and the

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Grenadines does not have any OSH. Trinidad and Tobago’s OSH 2006 (Amendment) applies only to industrial establishments belonging to or occupied by the State.  

- *Each member shall take appropriate measures ... to ensure that domestic workers enjoy ... social security protection, including maternity benefits (article 14)*

**Gap 11:** These provisions are not in the legislation for domestic workers in Barbados and Guyana. They are in separate laws.

Maternity benefits are provided in the domestic worker legislation of St. Vincent and the Grenadines and of Trinidad and Tobago. All CARICOM Member States have these legislative provisions.

- *Protection against abusive practices by private employment agencies (article 15)*

**Gap 12:** This provision is not contained in the legislation for domestic workers.

- *Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally (article 16)*

**NO GAP:** The laws in force for domestic workers in the three countries create a punishable offence and by implication grants access to the courts. The law for domestic workers in St. Vincent and the Grenadines does not create an offence. However, domestic workers have access to the Department of Labour for resolution of disputes in each country.

The Trinidad and Tobago Industrial Relations Act grants domestic workers have access to the Industrial Court only on matters of Minimum Wage and Maternity Leave due to an exclusion of domestic workers contained in the original Industrial Stabilization Act 1965 and Industrial Relations Act 1972.

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The Employment Rights Act 2012 of Barbados has established a Tribunal. The Labour Act (Cap. 98:01) of Guyana grants the Minister authority to set up Tribunals to settle disputes between classes of employees and employers.

- Protection of domestic workers through an effective complaint mechanism and measures that ensure inspection of households, compliance with labour laws, enforcement of regulations and penalties (article 17)

**Gap 13:** None of the legislation for domestic workers includes all of these provisions.

Guyana provides for inspection of households in its Occupational Health and Safety Act 1997. Barbados, Guyana, and Trinidad and Tobago require compliance with their laws for domestic workers but do not specify the enforcement or complaints mechanism.

**Summary**

Thirteen gaps were identified in the comparison between the individual articles of C189 and provisions contained in the four laws in force for domestic workers. Of the four laws reviewed, two lack 12 of the rights enshrined by C189 and the other two lacks 11 of these rights. These gaps result in failure to guarantee and protect several of the human rights of domestic workers. However many of the C189 gaps indentified in the legislation for domestic workers are in force in other employment rights laws in CARICOM Member States. Guarantees of the applicability of these laws to domestic workers require effective complaints and enforcement mechanisms and targeted public legal education.

Article 18 of C189 binds ILO Members to implement the Convention, guided by consultation with relevant stakeholders, through use of laws and regulations that extend or adapt existing measures to cover domestic workers or by developing specific measures for them, as appropriate. Thus, amendments to legislation in force or the drafting of new for domestic workers can draw on the C189 provisions already present in national legislation.
2.4 Ratification of C189 in CARICOM

Guyana and Jamaica have ratified C189, the ILO Decent Work for Domestic Workers Convention 2011. The Convention comes into force in Jamaica in October of 2017 but is already in force in Guyana. Officials in these countries explain that ratification was prompted by the vibrant activism of civil society organizations that had been campaigning prior and subsequent to the adoption of ILO C189. Since ratification, Guyana has held some of its planned stakeholder dialogues and consultations with domestic workers. Also, Guyana is reviewing its labour legislation to identify areas where decent work provisions need to be strengthened. Jamaica conducted a baseline study in 2014 and its OSH legislation is being designed in accordance with the guidelines provided for protecting domestic workers in the CARICOM Model OSHWE.

To date, ratification of C189 has not affected national legislation in Guyana or Jamaica. It should be noted that even if ratified by a Member State, ILO Conventions are not automatically assimilated into the domestic jurisprudence. International law instruments exist within a completely distinct legal sphere throughout the Commonwealth Caribbean. Specific enactment of domestic legislation is required to transpose international legal principles into a country’s indigenous legal framework\(^49\). Despite this methodology in Caribbean jurisprudence, there is a growing momentum to place direct reliance in the domestic sphere on the principles undergirding international labour law\(^50\).

No institutional barriers to ratification of C189 were identified by Labour officials in CARICOM Member States. However, while only two CARICOM Member States have ratified C189, in many countries stakeholder dialogue and other initiatives are underway. In St. Kitts and Nevis, where non-standard employment arrangements are emerging regarding household services, the Department of Labour has engaged the employment agencies that recruit domestic workers to ensure compliance with regulations. Antigua conducted a baseline study on domestic workers in 2012 and the Department of Labour is looking into legislation to address the convention and

\(^49\) Antigua and Barbuda Ratification of Treaties Act (1987)
safeguard the employment rights of domestic workers. The Department sees the anomaly of granting work permits to domestic workers and not extending full worker protection. It is of the view that employers of domestic workers should join with the State to ensure employment best practices as their homes have become workplaces. Montserrat\(^5\) is not a direct member of ILO but the Labour Department is willing to study and promote the Convention.

Barbados has brought stakeholders together, produced a study\(^5\) and collaborated with UN Women and the Employers’ Confederation to produce a Code of Practice for Employers of domestic workers. The Code is informed by existing legislation for domestic employees, other national employment laws and ILO C189. Grenada had brought multi-partite stakeholders together to dialogue on the Convention and devolved responsibility for organizing domestic workers to its Ministry of Social Development. Trinidad and Tobago is undertaking a comprehensive review of its labour legislation. Similarly, St. Lucia has begun a review of its Labour Code.

In two Member States, citing resource constraints, officials indicated that the Convention had not been studied. Therefore, the preferred approach is a policy of applying the C189 principles to labour practices without having to meet international reporting requirements and other formalities associated with ratification. Ministers of Labour across CARICOM and representatives of the ILO Head Office met in Jamaica, February 2017 to discuss decent work and this was followed in March by an ILO mission to St. Lucia to provide guidance on protocols for the prevention of child labour.

ILO Members are obligated to guarantee the human rights of domestic workers and ensure their equal treatment with other workers in accordance with national laws. The obligations of Members include taking measures to promote, protect and realize the fundamental principles and rights at work, namely: effective recognition of the right to collective bargaining, elimination of all forms of forced labour, abolition or prevention of child labour, elimination of discrimination in respect of employment and occupation. Members are urged to cooperate with each other to ensure the effective application of the provisions of C189 to migrant domestic workers.

\(^5\) ILO C189 would apply in Montserrat when the UK ratifies the Convention
\(^5\) Advancing Decent Work for Domestic Employees, Final Report, September 2013
A number of CARICOM Member States and trade unions, including those of domestic workers, were consistently involved in the dialogues that reached consensus on and adopted C189. These trade unions and civil society organizations assisted by the ILO Caribbean office have been advocating for ratification of C189 so that it becomes the standard within CSME.
3. CIVIL SOCIETY MOBILISATION ON CSME and C189

Three trade unions and one national and one regional non-governmental organization were consulted about their activism in relation to CSME and C189. These were the National Union of Domestic Employees (NUDE) in Trinidad and Tobago, Jamaica Household Workers Union (JHWU), Barbados Workers Union (BWU), red Thread – an activist women’s organization in Guyana, and the Barbados based Caribbean Policy Development Center (CPDC). The national organizations have a long history of promoting the human rights of domestic workers and have collaborated strategically at national, regional and international levels.

3.1 Caribbean Policy Development Centre (CPDC) [http://cpdcngo.org/](http://cpdcngo.org/)

CPDC is a regional coalition of non-governmental organizations of small farmers, women, youth, Indigenous People, rural populations, and faith-based organisations located across CARICOM. Altogether CPDC serves seventeen (17) regional, sub-regional and national NGOs working at the grassroots level in economic, social, and cultural sectors in the Caribbean. CPDC also has strong networking partnerships with organisations of persons with disabilities, artisans, micro entrepreneurs, trade unions and human rights activists.

The CPDC’s focus on domestic workers emerged out of a longstanding concern that the CSME should provide equal opportunity of free movement for all workers.\(^5^3\) The CPDC collaborated with BWU, JHWU, NUDE, Red Thread and other partners to implement the 2012 - 2014 project, Making CSME Work for Artisans and Domestics. The CPDC identified five countries that were either major senders or receivers of domestic workers and sought to guide domestic workers through the procedures that they would have to follow in seeking to benefit from the rights granted within the CSME Free Movement of Skilled Nationals Regime. CPDC also sought to influence the nature of the certification that authorized agencies would put in place for domestic workers. The project ended without realizing this latter goal but was successful in producing

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\(^5^3\) CPDC. 2004. Freedom of Movement: the Cornerstone of CSME. Researched for CPDC by CADRES
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informational materials for the benefit of domestic workers in the five countries targeted.

The first output of the project was a situational analysis of the uptake of their CSME Free Movement rights by domestic workers and artisans. The second output was an Education Plan that included workshops with a core of at least 10 domestic workers in each of the 5 target countries. The domestic workers influenced production of the booklet “Make the CARICOM Single Market and Economy Work for You”, promotional billboards, newspaper sticky notes, a webpage, Facebook page, Town Hall meetings, national and regional level radio and television broadcasts. These products were designed to reach domestic workers [and Artisans] with pertinent information that would assist their decision making as regards taking advantage of CSME rights.

CPDC also engaged the media as essential partners who had been prioritized for free movement and would have a perspective on this experience. The project developed a media toolkit on Domestic Workers and Artisans in the CSME and used it to implement a training workshop for media workers in each project country. The aim was to sensitize journalists and reporters to the issues that could and did affect free movement of artisans and domestic workers.

Over the three-year duration of the project CPDC lobbied and engaged a total of 99 decision makers from institutions such as COTED, COSHOD, CSME Unit, TVET, and OECS Commission on the main constraints preventing Domestic Workers and Artisans from taking advantage of the CSME. CPDC’s lobby was guided by its Background Paper on the status of the institutional arrangements, one of which was the required CVQ for domestic workers which was not being offered in any CARICOM Member State. This deficiency obstructed uptake of free movement rights.

3.2 Red Thread https://www.facebook.com/RedThreadWomenGuyana/

Red Thread is a grassroots women’s organization with a history of activism on valuing the care work done by women world-wide. Red Thread has a larger sphere of operations within which the Cora and Clotil Grassroots Women's Self-Help Service is a facility provided by domestic workers to domestic workers and other low waged women. The Service is named for Red Thread’s founding member Cora and for Clotil,
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the founding member of NUDE. Red Thread is not a trade union but works closely with NUDE, JHWU, BWU, and together with these trade unions, is actively nurturing the formative Caribbean Domestic Workers’ Network54. Red Thread has been engaging domestic workers since the 1990s within the ambit Global Women’s Strike campaign which promotes the value of women’s work in the household on reproductive, productive and developmental terms. Red Thread was instrumental in the advocacy and mobilization that led to Guyana’s ratification of C189. The organisation remains active on the issues in the following areas.

• **Definition of Domestic Work**
Red Thread expanded the definition of domestic workers to include cleaners at schools. This is because Red Thread deals with caring work wherever it takes place.

• **Research**
Red Thread conducted a survey among domestic workers and based on the results planned an education and sensitization programme. The text of various laws to inform its awareness building programme was sourced from the Parliament’s library.

• **Sensitization**
Red Thread sponsored TV shows where domestic workers talked about their good and bad experiences. Red Thread also heightened the awareness of domestic workers about various pieces of legislation such as Minimum Wage, Hours of Work, Safety and Health at Work. Domestic workers from the various regions were educated on all the laws concerning their employment. Red Thread sponsored representatives from the various regions of Guyana to attend its seminars and expanded their awareness and understanding of their benefits and obligations under the National Insurance Scheme. These representatives were tasked to enlighten other domestic workers.

• **Engagement of Government of Guyana**
Red Thread identified participants to attend a workshop convened by the Ministry of Labour on legislation that affects domestic workers. The women were able to interact very effectively with the content of the workshop because they knew the laws. Red

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54 CAFRA St. Lucia and the fledgling Antigua Domestic Workers Association are also members. These organizations not interviewed in this round of field research. The Network is due to meet during the second quarter of 2017.
Thread subsequently requested that the Ministry of Labour come to a forum where they could listen to the women’s issues and advise, based on the functions and rules of the ministry, where the domestic worker should lodge different complaints. This has not been done. Red Thread commends the Ministry of Labour for its sensitization and hopes for stronger follow through as regards implementing C189.

- **Mobilization**

Red Thread mobilized domestic workers and presented to the Government of Guyana a petition to ratify C189. The petition was signed by 3,000 supporters. The petitioners succeeded in respect of ratification, but implementation is lagging. Since the adoption of C189, Red Thread organizes a public protest by domestic workers every Labour Day (May Day). A series of additional activities are planned for May Day 2017. These include a noisy picket using pots and pans; an ILO supported 3-day workshop that covers among other topics - awareness of the law, writing a model work contract, and understanding the role and functions of a Cooperative Management Committee. Workers from Georgetown, Linden, Corranyrne and regions further afield will be facilitated to attend. Red Thread is continuing to work with domestic workers.

### 3.3 National Union of Domestic Employees (NUDE) of Trinidad and Tobago

NUDE represents domestic workers and other low income workers, such as informal sector workers, whom other trade unions refuse to represent. Recently NUDE applied to the Recognition Board for “Recognized Majority Status” for 4 companies: 2 quarries employing men, Smithfield Farm that employs mostly women, and Intex Aluminum Assembly Plant which has a mixed sex ratio of employers. NUDE fights against abuses by employers through the courts and in the media. NUDE represents low-paid workers in matters such as rape and sexual assault, wages, and summary dismissals. NUDE also campaigns for the rights of women workers.

NUDE has been in the forefront of the national, regional and international activism that led to the adoption of C189 and has since campaigned for its ratification by the Government of Trinidad and Tobago. NUDE began to organize a Domestic Workers Services Cooperative in 2009 as a legal entity that would be recognized by employers.
hiring domestic workers and which would be able to demand high standards of pay and working conditions. NUDE's goal has been to oversee the development of a worker cooperative that would provide good jobs for the domestic workers joining NUDE.

NUDE felt that as an organization it was positioned to take on the role of developing a cooperative because of its expertise in organizing workers; its knowledge of issues affecting domestic workers; its interest in raising the standards for domestic workers in Trinidad and Tobago; and its leverage with members interested in worker ownership. During the formative years members met with officials from the Cooperative Department to discuss the cooperative concept, its potential benefits, how it functions and where NUDE could receive assistance. Service quality, accessibility, affordability, durability and community participation are key dimensions of service provision that cooperatives actively promote. In 2014 the worker cooperative of 25 founding members became legally registered as a separate entity from NUDE. In this context, the ratification of C189 in the region is of even greater importance to NUDE.

NUDE has long argued for the Industrial Relations Act 1972 (IRA) of Trinidad and Tobago to be amended to include domestic workers. This category of workers is excluded because domestic work does not fit the definition of ‘work’ in the Industrial Relations Act. This exclusion resulted in domestic workers being denied all of the labour rights guaranteed under the IRA. The Minimum Wage law states that anyone who works in and around the household and is paid by the householder is a worker. Later pieces of legislation such as Minimum Wage, Maternity Protection and National Insurance include domestic workers, but they can only access certain benefits if their employment has been registered.

NUDE values the CSME Free Movement of Skills Regime because workers are allowed to move with spouse and other family members and are able to retain possession of passports and other documentation. NUDE considers CSME free movement in the region a deterrent to Human Trafficking. NUDE's campaign is for CSME to remove the “encumbrance” of CVQ as a requirement for domestic workers to move throughout the region because comparable categories of workers do not need this qualification.
3.4 Jamaica Household Workers Union (JHWU)

The JHWU, formerly Household Helpers Association, in 2016 reached a membership of 5,700 organized into 13 chapters administered by union leaders throughout the island. Services to members include sensitization, mediation, placement, training, and awarding excellence. JHWU holds an annual “Domestic Workers of the Year” event, sponsored by the firm Grace Kennedy, to recognize and promote excellence in female and male domestic workers. JHWU had contracted Human Employment and Resource Training (HEART) to provide NVQ Level I training for a cohort of 23 domestics. The programme has not been replicated due to lack of funds and HEART’s unwillingness to have instructors work on weekends, which is the time best suited to domestic workers. JHWU occasionally puts employers and domestics in contact based on requests from either party. Complaints made to the Ministry of Labour are referred to JHWU, which uses mediation to resolve issues. JHWU was one of the tireless advocates that helped to bring the C189 into being, witnessed its adoption, and was instrumental to its ratification by the Government of Jamaica. JHWU is continuing to raise awareness of C189 among its members and employers.

Prior to adoption of C189, and in tandem with public sensitization activities, JHWU developed the Code of Conduct entitled “My Fair Home” that targeted employers of Domestic Workers to sign the Code. Employers were thus sensitized to the Domestic Worker’s expectations. Subsequently, workers are able to testify as to whether the employer is adhering to the Code.

After adoption of C189: JHWU set the goal of persuading the Government of Jamaica to ratify the Convention and achieved it September 2016 as a result of considerable public sensitization on C189 carried out with the support of Fridrich Ebert Stiftung Jamaica office (FES) and the Institute for Gender and Development Studies, UWI Mona. On every public occasion that the JHWU General Secretary had access to local and international media, she called on the Prime Minister of Jamaica to ratify C189.

Regional outreach since Jamaica’s ratification: JHWU has targeted the domestic worker receiving countries of Antigua and Barbuda, Barbados, St. Lucia, and Trinidad and Tobago for ratification of C189. At the time of this research the Secretary of JHWU had written to the Prime Ministers of Antigua and Barbuda and of St. Lucia and was awaiting response to her letters before undertaking national visits. This endeavour
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will be supported by UN Women Caribbean Office. The JHWU is assisting Antigua to start a Domestic Workers Association. JHWU is participating also in the effort to solidify the Caribbean Domestic Workers Network.

JHWU used the opportunity of the Ministers of Labour encounter with ILO held February 2017 in Jamaica to lobby various ministers from the region. JHWU met with personnel from the CARICOM Secretariat’s CSME Unit about breaches of the Free Movement of Skilled Persons regime whereby domestic workers from Jamaica are granted much less time than the mandatory 6 months to live and look for work. JHWU participates in the International Federation of Trade Unions and continues its international lobbying through many global processes.

JHWU has a full agenda of national targets aimed at improving the condition and position of domestic workers. Some of the more pressing include the following:

- **Reform of laws in force and enactment of legislation for Domestic Workers.** An analysis of all labour laws in force identified provisions that do not apply fully to domestics. JHWU is advocating for a comprehensive new law and reform of employment laws.

- **Occupational Safety and Health at Work Bill:** is being prepared currently and inclusion of domestic workers must be ensured. JHWU proposes that a safety contract be drawn up between the domestic worker and the employer. This would be like the “My Fair Home” standard and serve as a record that would be used to pinpoint any breakdown in compliance.

- **Maternity Act:** this excludes Domestic Workers. JHWU has a proposal for a cost sharing of the contribution. The employer and the government would be asked to pay 90% and the domestic worker 10%. JHWU also wants to safeguard the continuation of the domestic worker’s employment after delivery of the baby.

- **National Insurance Contributions:** the hours of work constrain some workers from dropping off their contributions at the post offices. JHWU is proposing to facilitate members as well as non-members by having the domestic workers drop off their payments at the Union office, where this is more convenient. Contributions can then be remitted to the post offices on their behalf.
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- **Minimum Wage:** is below the cost of living and the weekly and daily rates are inconsistent. JHWU is doing the necessary analysis in order to recommend a more reasonable weekly minimum wage.

- **Holiday with Pay Act:** this is often not enforced for Domestic Workers. They are paid the regular daily rate and told that they do not qualify for overtime when they work on holidays.

- **Regulation of Employment Agencies:** currently most agencies are not registered. They charge exploitative fees and in the event that a domestic worker is dissatisfied with a placement and leaves she has to pay another fee to obtain another placement.


This trade union which celebrated 75 years of service in 2016 has been collaborating with other trade unions and civil society organizations as well as acting on its own to promote and protect the rights of migrant domestic workers within the CSME.

BWU has had a key role in C189 at the level of the ILO. BWU’s national goals were to have the convention ratified and legislation passed to reflect the special employment needs of domestic workers. BWU assumed it would have been easy to have such discussions since Barbados is a full Member of the ILO and the Minister of Labour had participated in the ILO deliberations which adopted C189 in June 2011. BWU felt that if this was followed closely by ratification and legislative action there would little need for refining of C189.

The BWU was pivotal propelling the adoption of C189. Keeping the momentum, BWU presented a petition for enacting the Convention into law to the Minister of Labour at the first International Women’s Day after the adoption of C189; i.e., in March 2012. BWU launched a campaign on Feb. 7, 2013 to raise awareness of C189 nationally. In August of that year BWU named radio broadcast personality Mr. Larry Mayers “Champion of Domestic Workers in Barbados”. Mr. Mayers has a strong community presence and generally good rapport with people. He had the ability to reach out to employers, friends, neighbours, and the public. BWU began mobilizing domestic workers to raise their awareness of C189 and have them speak on Larry’s programme.
so other domestics could hear about C189 from their peers. BWU entered into a partnership with the local Caribbean Broadcasting Corporation to use its popular programme “Q in the Community” as a platform to share information and build awareness. The General Secretary and Assistant General Secretary -Tutor also spent an evening in the studio speaking about C189. Sir Roy – Advisor to the General Secretary began meeting with domestic workers.

Resource constraints caused a lull in efforts since late 2015 but the BWU’s is building the capacity to resume mobilization. Many of those with whom BWU was in contact have changed their employment and gone on to other jobs such as security guards. The BWU will focus on building a community of trained advocates to locate domestic workers; to visit them and sensitize them towards the principles of C189. A number of targets have been set for the 2017 work period namely:

- *May Day*: presentation to the Minister of Labour by a trained core of domestics who have put forward their own proposals,
- *Quarterly*: PSAs with CBC, Action Poems in communities, infomercials placed in the bus terminals to reach domestic workers, because they use public transportation,
- *September*: launch a Domestic Workers Division committed to better treatment of domestic workers and ensuring that their economic and social contribution to the development of Barbados is properly valued.
- *Medium-term*: BWU Gender Committee to continue to work closely with the Caribbean Domestic Workers Network (CDWN) which is supported by the ILO.
- *Long-Term*: acquire the resources to ensure sustainability of the agenda for Decent Work for Domestic Workers

**Summary**

The activism of these five civil society organizations converged around the imperative to enable domestic workers to access their CSME free movement rights and to do so on the basis of the most favourable conditions of work. Adoption of ILO C189 was timely for the three trade unions as they had been engaged in the process and therefore eager to promote its tenets within the CSME. Together with Red Thread, they collaborated
with the CPDC to implement the 2012 -2014 project “Making CSME work for Artisans and Domestics”. These organizations brought to the project their expertise on the new international standards and promoted C189 as the benchmark of employment conditions for domestic workers in the CSME.

Convinced that all stakeholders should also be aware of, and subscribe to, the decent work agenda of the ILO they have been mobilizing and continue to advocate in their base countries as well as in other CARICOM Member States. They have been successful in raising awareness of C189 among a limited number of domestic workers. They have not been successful with the CVQ for domestic workers, which is a prerequisite for exercising their CSME freedom of movement rights. As JHWU has found, domestic workers with an NVQ are not getting the six-month stay stipulated for the CVQ under the CSME.

The organizations all plan to continue to engage stakeholders at different levels: training and accreditation institutions, national governments, various councils of CARICOM, media, employers, employment agencies, domestic workers and their families, and the general public. The scope and reach of their activism is dependent on the resources sporadically available to them as civil society organizations. However these agencies are fully committed to making the C189 well known and understood throughout the region and to domestic workers to accessing their free movement rights and benefits from the CSME.
4. GENERAL CONCLUSIONS AND STAKEHOLDER PROPOSALS

4.1 Conclusions

IMPACT Justice Project commissioned research to ascertain whether employment law focusing on the rights of domestic workers is in force within CARICOM/CSME and to gather information that would be the basis of legal education of different stakeholders across the region. Since 2009, domestic workers possessing a Caribbean Vocational Qualification (CVQ) or “Equivalent” [in Domestic Work] are eligible for Free Movement within the CSME. This legal right is intended to offer sustainable livelihood opportunities to domestic workers, a category of workers known to be economically vulnerable. In this light, the legal protections afforded domestic workers contracting their labour in different CARICOM Member States need to be well-known to labour officials, national and migrant domestic workers, their families, employers, trade unions, civil organizations and the wider society. The research was undertaken in the context of convergence between CSME Free Movement for Household Domestics and the ILO Convention on Decent Work for Domestic Workers 2011 (C189).

The research found that domestic workers are not being facilitated with employment opportunities under the CSME Free Movement of Skilled Nationals regime. Domestic workers have been migrating and finding employment in different CARICOM Member States through legal work permit as well as the option of free movement of nationals among OECS Members. To date, the CVQ in Domestic Work does not exist and COSHOD has not clarified the meaning of “Equivalent”. The NVQ in Domestic Work is obtainable in Barbados, Jamaica and Trinidad and Tobago. The research found that CARICOM lags on the implementation of CSME and C189, both of which have legal implications for the economic and social well-being of domestic workers throughout the region.

Desk research identified one law in force specifically focusing on the employment rights of domestic workers in Barbados, Guyana, Trinidad and Tobago, and St. Vincent and the Grenadines. There are also brief references to domestic workers in one or two statutes and statutory instruments of Belize, Grenada, St. Lucia and St. Kitts and Nevis. Some Member States do not seem to mention domestic workers in any law, but all have progressive employment and labour legislation that, in principle, should apply
Employment Law Focusing on the Rights of Domestic Workers

The laws enacted between 1961 and 1991 in the four countries are ahead of other CARICOM Member States in providing specific guarantees of the employment rights of domestic workers.

The four laws for domestic workers were subjected to three different reviews: a gender analysis, a mapping against similar laws in 4 other Commonwealth countries and 1 USA state, and a gap analysis between each article of C189 and the provisions of laws in force. Progressive as these laws were at their time of enactment, the gender analysis revealed an underlying ideology of inequality that caused these laws to overlook 8 major areas of gender equality and human rights for a workforce that was, and continues to be, overwhelmingly female. The mapping exercise showed that the laws in CARICOM had preceded by two decades those in international jurisdictions. However, these later laws demonstrated the capacity of legislation to incorporate gender equality and human rights provisions. All of the provisions of the four laws are encapsulated in C189, but the gap analysis found that the ILO Convention contains 13 articles that are not provided in the CARICOM laws. The three types of analyses highlighted the inadequacy of legislative provisions in force to guarantee the employment rights of domestic workers within the context and framework of CSME.

Gender analysis emphasizes the ability of law to either illuminate or mask the significance of women in a labour sector and, concomitantly, to equitably address or efface their practical needs and strategic interests. Legislation ought to be articulated in gender inclusive language, and provide for pay that is commensurate with the real value of domestic work to the sustenance of human life; the right of the service providers to resources to acquire an acceptable standard of living and human capability; protection of the worker’s sexual integrity; equal valuing of female and male workers; elevation of the status of domestic work, and improvement of its position in industrial relations practice and national policy.

The laws for domestic workers in other Commonwealth jurisdictions contain stipulations that address some of these gender issues. Provisions include grades of domestic work, increases in wages, fixed pay day, payment intervals, prohibited and accepted actions relative to the payment of wages. Leave provisions are expanded to include family leave and breast-feeding breaks. There are codes regarding the privacy and dignity of the domestic worker. Domestic workers are entitled to gratuity in cases
where the employer failed to register the worker for National Insurance benefits. The Record or Certificate of Service is obligatory along with notice of termination having to be given within the interval separating two pay days. These provisions provide a model for integrating gender equality and human rights into CSME employment law.

C189 encapsulates the principles of gender equality and human rights that are best expressed in the practice decent work. Among others, C189 upholds the following rights of domestic workers: worker clarity and agreement on the tasks to be carried out and the terms of employment; entitlement to pay at or above the minimum wage commensurate with the range of duties performed in a given period; safe conditions at work; protection from all forms of abuse, harassment and violence; uninterrupted weekly rest periods; freedom of choice in the use personal free time; the right to privacy, retention of personal and travel documents; and freedom of association.

The qualification requirements for domestic workers to access CSME free movement legal rights together with the standards set by C189 progressively formalizes the household services sector. This status should make it possible for domestic workers to take complaints to the Labour Department in whichever CARICOM Member State they are resident. However, only Guyana (2013) and Jamaica (2016) have ratified C189 and Jamaica does not have legislation focusing specifically on the employment rights of domestic workers.

Interviews of diverse stakeholderst conducted in 10 CARICOM Member States found strong correlation of the perception of abuse of domestic workers. Senior labour officials confirmed this situation and asserted that all employment laws are invoked when responding to formal complaints made by domestic workers. The state and civil society representative proposed improvement of legislative guarantees for domestic workers either by instituting new laws or ensuring compliance with those in force. Domestic workers want legislative amendments that will hold employers accountable to treat them “as human beings”.

55 The other Commonwealth jurisdictions that have ratified C189, namely South Africa (2013) and Ireland (2014) have comprehensive human rights legislation for domestic workers. Canada has not ratified C189, neither has the UK, nor the USA.
Three trade unions and two NGOs have been energetically promoting the employment rights of domestic workers and have mobilized both with them, and on their behalf, regarding the CSME and C189. To date there have been some moderate successes in that three States have in place at national level the key certification needed for the CSME Free Movement of Domestic Workers. Similarly two States have ratified C189 although neither has improved the national legislative framework that should follow ratification. Civil Society organizations, despite limited human and financial resources, continue to engage domestic workers and policy makers in relevant institutions with a view to making a significant contribution to the achievement of the lofty goals of CSME and C189.

The organizations are convinced of the need for enabling legislation that will translate the spiritual commitments of C189 into a meaningful work programme. C189 provides the moral augments while law provides the empowerment. Legislation would contain penalties for employers who do not treat domestic workers like any other worker. Legislative provisions empower people to speak out and be protected from vilification. The stakeholders identified areas that should be included in any model legislation to guarantee the employment rights of domestic workers.

4.2 Stakeholder Proposals

Domestic workers, civil society representatives, and public officials offered several proposals for improving the status of the household services sector as follows:

CPDC Civil Society Response [undated report on the CSME]

- Make legislative amendments granting contingent rights;
- Simplify/provide coherence in the verification process across Member States;
- Draft procedures for the complaints mechanism;

- In lieu of the CVQ regime facilitate the certification of artisans and domestic workers through a simpler alternative mechanism, taking examples from the certifying process of other skilled worker categories such as sportspersons;

- Develop a continual formal training programme among officials implementing the CSME regimes across the Member States to increase clarity and uniformity
Employment Law Focusing on the Rights of Domestic Workers

in administrating the system, particularly for domestic workers, artisans and other vulnerable users;

- Consider the establishment or reformulation of data collection systems with respect to free movement and migration. Collect reliable and pertinent information, including gender disaggregated data, in order to provide conclusive analyses of the implementation and operation of the CSME and to inform decision-making processes;

- National Training Agencies/TVET Councils/Certifying Agencies should develop a capacity building programme with a view to establishing the associations and unions of domestic workers as verifiers for the CVQ/NVQ in Domestic Work;

- Consider a harmonized and less onerous approach to the requirement for Police Certificates [as part of the application process for the Skilled Certificate];

ST. KITTS AND NEVIS
- Domestic workers should be made fully aware of their rights under CSME;
- There should be a focal point where migrant domestic workers can get recourse when their rights are violated;
- Migrant domestic workers should receive some orientation in the labour laws of the country where they reside;
- All domestic workers should receive an orientation about what their job will consist of;
- The public should be made fully aware of C189

ANTIGUA AND BARBUDA

There can be a tripartite approach involving the National Labour Board, Employers and Trade Unions to raise public awareness of C189. That would also include public consultation to find out how employers, domestic workers and other stakeholders feel about inspection of private homes in order to arrive at a reasonable approach. Other stakeholders that should be consulted include: Social Security, Gender Affairs, Board of Education, Medical Board, Immigration, and Trade Union.
Employment Law Focusing on the Rights of Domestic Workers

MONTSETRAT
- C189 can be raised with the Labour Advisory Board, and on the Monday night radio outreach programme of the Department.

ST. LUCIA
- Any new legislation should state expressly where exclusion applies in respect of domestic workers.

ST. VINCENT AND THE GRENADINES Youth Division
- There should be legislation specific to domestic workers which set standards for employers;
- Contracts must be clearly spelt out, in writing if possible, and conditions of work, holidays, health safeguards specified;
- Remuneration – there should be a raise in wages. The Minimum Wage is still EC$30.00 per day, after a massive increase;
- A meal should be provided, and a transportation subsidy in some cases;
- There should be a forum at which we hear from domestic workers concerning the issues that affect them. The forum should be to put them on the right path concerning their rights and knowing the law;
- At Career Day domestic work can be promoted as an option; now that there is the need for CVQ/NVQ and people are able to specialize in different areas;
- There must be a well thought out communications strategy to ensure that all employees, employers and the general public understand the issues.

SVG DEPARTMENT OF LABOUR:
- There should still be legislation for domestic workers as a specific group. Domestic Work should be treated separately in law due to the vulnerabilities of workers isolated within private residences. One of the major concerns should be for what happens to them at the end of their working life.

SVG GENDER AFFAIRS
- Model legislation should seek to promote greater economic and social valuing of domestic work.
GRENADA National Organisation of Women

- Protection for the domestic worker in the private household, including provisions related to sexual harassment.

LABOUR DEPARTMENT:

- Legislation should provide a test to prove sexual harassment as well as some form of remedy. In cases of sexual harassment it is the worker’s word against the employer’s.

TRINIDAD AND TOBAGO

- Domestics have to be persuaded to make their independent NIS contributions;
- Enforcement mechanisms are required for the laws;
- Employers and employees should be educated and trained to uphold the labour laws; for example, the employees should also give notice of intention to quit;
- A committee consisting of NUDE/Government/Employers representatives should be established to speed up resolution of cases of for domestic workers;
- Domestic workers must be recognized under the Industrial Relations Act and this will address all the legal anomalies that affect them.

GUYANA Red Thread

- The CVQ for domestic workers should be a practical exam in which they are video-taped demonstrating doing their tasks. The assessment can identify areas for improvement. The worker should then have a second chance to show their improvement. The policy must be clearly expressed so that the domestic worker understands;
- Domestic workers must be able to sue their employers; e.g. for accidents on the job;
- There must be a level of respect and value for domestic work such that each task is remunerated at an appropriate level;
- C189 should be implemented.

LABOUR DEPARTMENT

- Wherever there is a domestic worker this person should be registered with the Labour Department. If a household employs people, similarly, it should register its employees. All businesses have to register with the department;
Employment Law Focusing on the Rights of Domestic Workers

- Under OSH protective wear for domestics doing certain kinds of cleaning should be compulsory;
- There should be written contracts so that any deviation from the agreed tasks can be tracked by both parties and compensation negotiated.

5. **RECOMMENDATIONS**

_The main gaps in labour provisions and gender issues identified in the four laws in CARICOM can be summarized as follows:_

1. Lack of formal contract specifying terms and conditions of employment. The laws require employers to keep records and put duties in writing but it is not stipulated that the employee should be given a written contract. Oral or written contract is provided for in the Labour Acts and Employment Acts.

2. Lack of an effective complaints mechanism and lack of provisions that obligate the State to respond to and resolve issues in a timely manner.

3. Lack of measures to ensure enforcement of employment laws, regulations and penalties. This includes lack of measures to ensure any investigative visits or inspection of the household as a workplace.

4. Absence of effective prevention and protection from all forms of verbal abuse, physical violence, sexual harassment, and economic injustice. This heightens the possibility for infringement of human rights, including health and safety at work.

5. Absence of provisions for regular and jointly agreed: payment interval, pay day, and pay increases that take account of expanded responsibilities and the true value of domestic tasks.

6. Absence of mechanisms for registration of domestic workers to ensure employer compliance with statutory obligations under the NIS/Social Security.

7. Lack of protection against exploitative practices by employment agencies.
The various proposals submitted by stakeholders are summarized as follows:

Regional Level

1. Draft gender equitable model domestic workers legislation for the CSME drawing on CI89 as well as the exemplary provisions in force in the laws of other Commonwealth Countries and USA states cited in this report.

2. Expand the remit and accessibility of CSME Focal Points to receive complaints from migrant domestic workers and provide timely and adequate recourse.

3. Develop a programme of continuous training and refreshers for officials who are the first points of contact responsible for implementing the procedures, processes and administration of the CSME.

4. Initiate a streamlined regional data collection system to incorporate domestic work into census statistics in a manner that reveals its magnitude, direct and indirect economic contributions to revenue generation and its social significance within the CSME.

5. Decree a **Living Wage** for domestic workers in order to impute their household services with its true cultural, economic, human development and social values. A living wage is calibrated to keep pace with the cost of living or consumer price index and to maintain one’s standard of living above the vulnerability line and leave no one behind.

National Level

6. Ratify C189 and incorporate its articles into national legislation in order to address all of the gaps identified above.

   a. Make use of the C189 supplement, Recommendation No 201, which contains practical guidance concerning possible legal and other measures for giving effect to the rights and principles stated in the Convention;

   b. Give special attention to enforcement mechanisms at various levels to give effect to the legislative protections for domestic workers, including State commitment to implementing these legislative provisions;
c. State expressly where exclusion applies to domestic workers in any new legislation;

d. Ensure that the legislation that governs domestic workers provides coverage that is adequate for all domestic workers, including undocumented migrants.

7. Enact legislation to prevent and punish sexual harassment. Legislation should contain the broadest definition of sexual harassment, protocols to effectively prove harassment and appropriate remedies; as contained in the IMPACT Justice Model Legislation.

8. Conduct comprehensive and long-term multi-media public sensitization programmes on the rights of domestic workers in the CSME and C189 targeting different stakeholders, inclusive of the following actions:

   a. Establish a multipartite partnership for this purpose consisting of: Labour Board, employers, domestic workers trade unions, committed civil society organizations.

   b. Convene forums for employers, migrant and national domestic workers to have orientation on, among other issues:

       i. Contingent rights under CSME

       ii. Employment and Labour laws of the country of residence

       iii. Decent Work for Domestic Workers Convention C189 and R201

       iv. Reasonable approaches to inspection of the private residence

       v. Tripartite Committees for speedy resolution of issues/complaints

       vi. The value of the National Register of Domestic Workers

       vii. Vigilance regarding the payment of national insurance contributions

9. Institutionalize within a realistic timeframe, and maintain, the local educational infrastructure necessary to offer the CVQ in Domestic Work.
a. Offer a practical examination in which domestic workers may be videotaped demonstrating their skill and experience. Areas that do not meet CANTA standards can be highlighted for improvement and re-examination;

b. Facilitate cross-country collaboration whereby domestic workers in the countries lacking the requisite educational infrastructure can benefit from observational visits of verifier/assessors teams.

c. Implement an effective communications strategy to promote the CVQ/NVQ to Domestic Worker as an option at Career Showcase in order for domestic workers, employers and the general public to understand the emerging trends in the formalization of domestic work.

The recommendations are cognizant that the various provisions in other employment legislation in force that should apply equally to domestic workers have not provided effective protections due to the special characteristic of that sector. In that light the recommendation for model legislation seeks to locate or refer to all the provisions a single law. Three comprehensive national studies conducted in Antigua and Barbuda, Barbados, Jamaica and involving employers, domestic workers and government agencies have come to the same conclusion. A number of Commissioners of Labour also see a need for separate legislation for domestic workers due to the vulnerabilities to which they are exposed. The new legislation should provide enforceable human rights guarantees during employment and social protection at the end of working life.
ANNEX A. Text of the Four Laws Examined

BARBADOS DOMESTIC
EMPLOYEES CHAPTER

344

ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Conditions of employment.
3A. Minimum wage and maximum hours of duty.
4. Records to be kept.
5. Penalty.
6. Power to order payment on conviction.
7. Limitation of time.

SCHEDULE

An Act to provide for the hours of duty of domestic employees.

Commencement: [1st July, 1961]

Short title.
1. This Act may be cited as the Domestic Employees Act.

Interpretation
2. For the purposes of this Act, the expression
“day-time” means the hours between six o’clock in the morning and eight o’clock in the evening of the said day:

“domestic employee” means any person employed for reward for the purpose of performing household duties in a private dwelling-house;

“employer” means any person employing one or more domestic employees and includes any agent, manager or representative of such person, who is
responsible directly or indirectly for the payment, in whole or in part, of remuneration to a domestic employee;

“night” means the hours between eight o’clock in the evening of any one day and six o’clock in the morning of the next succeeding day.

*Conditions of employment.*
3. Without prejudice to the Holidays with Pay Act, every domestic employee shall be employed in accordance with the provisions set out in the Schedule. [Cap. 345., Schedule. ,1982-10.]

Minimum wage and maximum hours of duty.
3A. The Minister may, by order, prescribe the minimum wage payable to domestic employees and the maximum hours per week during which they may be employed.

Records to be kept.
4. Every employer shall keep a record of the hours of overtime worked by every domestic employee employed by him.

Penalty.
5. Any employer who fails to comply with any of the provisions of this Act shall be guilty of an offence and shall be liable on conviction by a court of summary jurisdiction to a fine of $25.

Power to order payment on conviction
6. Where an employer has been convicted of an offence under this Act, a magistrate may in addition to the fine imposed by him order the employer to pay to the employee any payments due to him under this Act.

Limitation of time.
7. No prosecution against any person in respect of any offence under this Act shall be commenced after the expiration of 3 months from the time when the offence was committed.

SCHEDULE

Hours of Duty of Domestic Employees

1. The time during which a domestic employee is at the disposal of the employer shall be deemed to be hours of actual work but in the case of a domestic employee whose time is at the disposal of the employer during the whole or any part of the day-time and who by the terms of the contract is required to be on the premises of the employer during the night such period of time during the night shall not be deemed to be hours of actual work, unless the parties
agree that the whole or any part thereof shall be hours of actual work.
2. The employer shall grant the domestic employee employed by him a break of not less than 1 hour in every working day. Any such break shall not be included in the computation of the hours of actual work.

3. In addition to the daily break referred to in paragraph 2, the domestic employee shall be granted 2 rest periods, each of not less than 24 hours consecutive rest, in every month.
Employment Law Focusing on the Rights of Domestic Workers

Statutory Instruments Supplement No.
Supplement to Official Gazette No. dated

S.I. 1982 No. 81

Domestic Employees

CAP. 344

DOMESTIC EMPLOYEES (RATE OF PAY AND HOURS OF DUTY) ORDER,
1982

Authority: This order was made on 26th April 1982, by the Minister under section 3A of the Domestic Employees Act.


1. This Order may be cited as the Domestic Employees (Rate of Pay and Hours of Duty) Order, 1982.

2. The minimum rate of pay payable to domestic employees is $1.50 per hour.

3.(1) Subject to the Schedule to the Act, no domestic employee shall be employed for more than 44 hours in any 1 week.

(2) Notwithstanding sub-paragraph (1), if a domestic employee agrees, he may be employed for periods in excess of the number of hours specified in that sub-paragraph in which case he shall be remunerated in respect of the hours overtime so worked at a rate of pay not less than half as much again as the rate at which he is ordinarily remunerated.
LAWS OF GUYANA

Household Service Workers (Hours of Work) Cap. 99:07 3

CHAPTER 99:07

HOUSEHOLD SERVICE WORKERS (HOURS OF WORK)
ACT

ARRANGEMENT OF SECTION

SECTION
1. Short title.
2. Interpretation.
3. Hours of work.
4. Overtime.
5. Off day.
6. Register of wages, hours and conditions of work.
7. Offences.
8. Institution of prosecutions by Permanent Secretary.
9. Regulations.

AN ACT to regulate the working hours of household service workers and for purposes connected therewith.

[24TH OCTOBER, 1980]

1. This Act may be cited as the Household Service Workers (Hours of Work) Act.

2. In this Act—

“household service worker” means any person employed as a domestic in any private residence, and includes children’s nurses;

“employer” means any person who employs a household service worker;

“normal hours” means the maximum number of hours which may normally be worked by a
household service worker in accordance with section 3.

Act 17 of 1980

Short title.

Interpretation.
### Hours of work

3. The number of hours which may normally be worked by household service worker shall not exceed eight on any day or forty-eight in any week.

### Overtime

4. A household service worker who, at the request of his employer, works in excess of the normal hours shall be paid for every hour or part thereof so worked at one and one-half times the rate at which he would, but for this section, be paid.

### Off-day

5. A household service worker employed on a weekly, fortnightly or monthly basis, shall be allowed by his employer in every week a continuous period of twenty-four hours during which he is not required to work for his employer:

   Provided that any such period shall not be disregarded in reckoning the number of hours worked by a household service worker.

### Register of wages, hours and conditions of work

6. (1) The employer shall keep a register (hereinafter referred to as “the register”) containing a record of the wages and hours of work of every household service worker.

   (2) The register shall be in such form and shall contain such other particulars, as may from time to time be prescribed by the Minister by notice published in the *Gazette*.

   (3) The register shall be produced for inspection by any officer of the Department of Labour.

### Offences, [6 of 1997]

7. Any employer who—

   (a) fails to comply with the provisions of section 4, 5 or 6:

   or

   (b) knowingly makes or causes or permits to be made any false entry in the register,

shall be liable on summary conviction to a fine of twenty-seven thousand five hundred dollars.
8. The Permanent Secretary may institute or cause to be instituted any prosecution for the purpose of enforcing the provisions of this Act and any officer of the Department of Labour may appear as prosecutor for and on behalf of the Permanent Secretary.

9. The Minister may make regulations generally for giving effect to the purposes of this Act and for the better carrying out of any of the provisions of this Act.
SAINT VINCENT AND THE GRENADINES
WAGES
STATUTORY RULES AND ORDERS

WAGES REGULATIONS (DOMESTIC WORKERS) ORDER, 2003

(Gazetted 15th April, 2003)

IN EXERCISE of the powers conferred by section 10 (4) of the Wages Councils Act, 1953 (No. 1 of 1953) the Governor General makes the following Order: -

Citation and Commencement.
1. This Order may be cited as the Wages Regulation (Domestic Workers) Order 2003, and shall come into operation on the 1st day of May, 2003.

Interpretation.
2. In this Order -

"domestic worker" means any person employed wholly or partly in any private household as a cook, cleaner, children's nurse or general household help;

"week' means a period of time beginning on Monday morning and ending on Sunday evening, subject to the rest periods as provided for in the schedule.

Conditions of Employment.
3. (1) The minimum remuneration payable to a domestic worker shall be as specified in the Schedule to this order.

3. (2) The hours of work, rest period, sick leave, maternity leave and vacation of a domestic worker shall be as specified in the Schedule to this order.

Non-application.
4. This Order shall not apply to a domestic worker employed in any undertaking operated by the Government.

Revocation.
5. The wages Regulations (Domestic Workers) Order 1989 (No. 12 of 1989) is hereby revoked.

SCHEDULE
1. Conditions of employment
(a) Persons with living-in accommodation $300.00 per month with meals

(b) Persons without living-in accommodation $350.00 per month with meals

(c) Persons employed on a day-to-day basis $20.00 for an eight hour day or part thereof

2. Hours of work.

(a) The hours of work for a person provided with living-in accommodation should not exceed eleven in any one day of which two hours should be for rest and for meals.

(b) The hours of work for a person who is not provided with living-in accommodation should not exceed ten in any one day, of which two hours should be for rest.

Provided always, that on Sundays (or on Saturdays for persons who observe Saturday as the Sabbath) and public holidays the hours of work for both categories of workers should not exceed six.

3. Rest Periods.
A domestic worker employed other than those on a day to day basis should be given one afternoon each week beginning at one o'clock in the afternoon and all Sundays off or all Saturdays depending on religion.

4. Annual Holidays.
A domestic worker, other than one employed on a day to day basis, shall be entitled to holidays as follows -

(a) a worker with 1 to 5 years service with one employer, 14 calendar days;

(b) a worker with over 5 years service with one employer, 21 calendar days.

5. Sick leave.
A domestic worker who has had six (6) months continuous service with an employer shall be entitled to fourteen (14) days sick leave with pay in any one subsequent year. Such sick leave however, shall not exceed two (2) days at anytime unless a medical certificate is presented to the employer by the third day.

In cases where surgery is required a maximum of thirty (30) calendar days shall be granted.

A worker who has had two (2) years continuous service with an employer shall be entitled to maternity leave for the aggregate period of four (4) weeks confinement during which time the employer should pay not less than thirty-five per cent (35%) of the employee's wages.
MINIMUM WAGES (HOUSEHOLD ASSISTANTS) ORDER

ARRANGEMENT OF CLAUSES

1. Citation.
2. Interpretation.
5. Hours of work.
6. Days off.
7. Vacation leave.
8. Sick leave.
10. Duties to be set out.

FIRST SCHEDULE.
SECOND SCHEDULE.

1. This Order may be cited as the Minimum Wages (Household Assistants) Order.

2. In this Order—

“full-time household assistant” means a household assistant who normally works with an employer for the period set by clause 5 as a work week;

“household assistant” means a full-time or part-time household assistant employed in the carrying out of any or all household duties;

“household duties” means all those duties that are inherent in the normal functioning of a household, such as cooking, cleaning, washing or ironing;

“medical certificate” means a medical certificate prepared by a registered medical practitioner;

“part-time household assistant” means a household assistant whose work week with an employer does not equate with the work week of a full-time household assistant;

“pay” means, in the case of a full-time household assistant, the weekly remuneration received by such an assistant and in the case of a part-time household assistant the hourly rate of pay received by such an assistant.

3. (1) No household assistant shall be paid less than the minimum remuneration set out in the First Schedule.

(2) A full-time household assistant’s pay shall not in any
way be abated by reason of a public holiday falling within the
work week referred to in clause 6.

4. (1) Where a full-time household assistant works more
than the work week prescribed by clause 5, the minimum
remuneration payable for such overtime work shall be at the rate
set out in Part I of the Second Schedule.

UNOFFICIAL VERSION
UPDATED TO DECEMBER 31ST 2015

Minimum remuneration for overtime.
Part I.
Second Schedule.

L.R.O.
(2) A household assistant, who by mutual agreement with his employer, works on a public holiday, shall be paid at a rate no less than that set out in Part II of the Second Schedule.

5. The weekly hours of work applicable to a full-time household assistant shall be forty-four hours, exclusive of lunch or other rest period, spread over a period of six days per week.

6. (1) An employer of a full-time household assistant shall grant the said household assistant one day off each week, such day off to be the subject of agreement between them.

(2) A full-time household assistant shall not accumulate more than four weekly days off.

(3) Where a full-time household assistant has accumulated four weekly days off, his employer shall grant him and he shall take four days immediately after the end of the week in which the fourth day off was earned.

7. (1) A full-time household assistant shall be entitled to two weeks vacation leave annually with pay on completion of twelve months service from the date of his employment subject to having worked a minimum of two hundred and twenty days in that period.

(2) In the case of a part-time household assistant pay shall be calculated on the basis of the average remuneration for the preceding three months or the pay immediately preceding vacation leave, whichever is the higher rate.

(3) Where a public holiday falls within the period of vacation leave of a household assistant, the household assistant shall be granted one additional day’s leave with pay for every such public holiday.

(4) Where a household assistant becomes sick during his period of vacation leave, then subject to clause 8 he shall be granted one additional day’s leave with pay for every such day.
of sick leave once the sick leave is certified by a registered medical practitioner.
8. (1) A household assistant shall be entitled to fourteen working days sick leave per year with pay subject to—
   (a) his being continuously employed for a period of at least six months;
   (b) his production of a medical certificate in respect of any period of illness in excess of two days.

(2) The pay to which a household assistant is entitled shall be the difference between his pay and his entitlement to sickness benefit under the National Insurance Act.

9. (1) A household assistant shall be entitled to maternity leave and to resume work after such leave.

(2) At least one hundred and fifty days prior to her confinement a household assistant shall give to her employer a medical certificate stating the probable date of delivery.

(3) A household assistant shall be entitled to proceed on leave six weeks prior to the probable delivery date stated in the medical certificate and shall not be required to return to work sooner than seven weeks after the birth of the child.

(4) At least two weeks prior to her intended return to work, a household assistant shall give to her employer a medical certificate stating the actual date of birth of the child, certifying her fitness to return to work and indicating the intended date of return.

(5) During the period of maternity leave, a household assistant shall be entitled to pay calculated by computing the difference between her pay and any maternity benefits that she may be entitled to under the National Insurance Act.

10. The duties, hours of work and rest periods of every household assistant shall be clearly set out in writing by his employer when the household assistant first assumes duty.
### FIRST SCHEDULE

**MINIMUM WEEKLY REMUNERATION FOR HOUSEHOLD ASSISTANTS**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time Household Assistant</td>
<td>$150.00 per week</td>
</tr>
<tr>
<td>Part-time Household Assistant</td>
<td>$3.75 per hour</td>
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</tbody>
</table>

### SECOND SCHEDULE

**PART I
MINIMUM REMUNERATION FOR HOUSEHOLD ASSISTANTS (Overtime)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
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<tbody>
<tr>
<td>Full-time Household Assistant</td>
<td>$5.10 per hour</td>
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**PART II
MINIMUM REMUNERATION FOR HOUSEHOLD ASSISTANTS (Public Holidays)**

**Additional hourly rate**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full-time Household Assistant</td>
<td>$6.80 per hour</td>
</tr>
<tr>
<td>Part-time Household Assistant</td>
<td>$7.50 per hour</td>
</tr>
</tbody>
</table>
ANNEX B. List of Employment Laws
(Barbados, Guyana, St. Vincent and the Grenadines, Trinidad and Tobago)

Barbados https://labour.gov.bb/labour-legislation

Chapter 23: Labour Department Act
Chapter 42: Occupational Training Act, Subsidiary Legislation A1
Chapter 47: National Insurance and Social Security Act, Subsidiary Legislation A1-T1
Chapter 160: Better Security Act
Chapter 338: Accident & Occupational Disease (Notification) Act
Chapter 345: Employment Exchanges Act
Chapter 345A: Employment of Women (Maternity Leave) Act
Chapter 346: Employment (Miscellaneous Provisions) Act
Chapter 348: Holiday with Pay Act
Chapter 349: Labour Clauses (Public Contacts) Act
Chapter 351: Protection of Wages
Chapter 353A: Radiation Protection Act
Chapter 354: Recruiting of Worker Act
Chapter 355A: Severance Payments Act Subsidiary Legislation A1-F1
Chapter 356A: Shops Act
Chapter 356: Safety and Health at Work Act
Chapter 359: Sugar Works (Minimum Wage and Guaranteed Employment) Act, Subsidiary Legislation A1
Chapter 360: Trade Disputes (Arbitration and Enquiry) Act
Chapter 361: Trade Unions Act
Chapter 362: Wages Councils Act
Employment Rights Act - 2012

ANNEX B continued

Guyana\footnote{56} \url{http://www.cagi.org.gy/pubs/Manual%20Version%20Nov%2029.pdf}

1. Labour Act Cap. 98:01
2. Termination of Employment and Severance Pay Act No. 19 of 1997 Cap. 99:08
3. Wages Council Act Cap. 89:04
4. Leave With Pay Act No. 6 of 1995 Cap. 99:02
5. Shops (Consolidation) Act Cap. 91:04
7. Occupational Safety and Health Act No. 32 of 1997
8. Labour (Conditions of Employment of Certain Workers) Act No. 18 of 1978
10. Employment of Young Persons and Children Act No. 9 Cap. 99:01
11. Licensed Premises Act Cap 82:22
12. Factories (Hours and Holidays) Act Cap 95:02
13. Bakeries (Hours of work) Act Cap. 99:06

\footnote{56} Section 3 LABOUR LAWS PRIMER
14. Household Service Workers (Hours of work) Act Cap. 99:07

15. Essential Services Act Cap. 54:01

16. Steam Boilers Regulation Act Cap. 95:04

17. Factories (Hours of Holiday) Act Cap. 95:02

ANNEX B. continued

St. Vincent and the Grenadines\textsuperscript{57}

Accidents and Occupational Diseases (Notification) Act (CAP.205)

Caribbean Community Act (CAP.184)

Equal Pay Act (CAP.196)

Employment of Foreign Nationals and Commonwealth Citizens Act (CAP.208)

Employers and Servants Act (CAP.206)

Employment Exchanges Act (CAP.207)

Employment of Women, Young Persons and Children Act 2013

Immigration (Caribbean Community Skilled Nationals) Act 1997

National Insurance Act (Cap.229)

Pensions Act (CAP.272)

Protection of Employment Act (Cap 212) Act 20 of 2003

OECS Act (CAP.196)

Trade Disputes (Arbitration and Settlement) Ordinance No 13 of 1967

\textsuperscript{57} Consolidated Index of Statutes and Subsidiary Legislation of St. Vincent and the Grenadines compiled January 2016
Trade Union Act Section 8A (No. 40 of 1974)
Wage Regulations Act 2003
Workmen’s Compensation Act No. 22 of 1973

ANNEX B. continued

Trinidad and Tobago\textsuperscript{58}

Accreditation Council of Trinidad and Tobago (Chap.39:06)
Caribbean Community Act (Chap.81:11) Sch. Revised Treaty of Chaguaramas Amendment 2006
Caribbean Community (Removal Restrictions) Act 2005
Foreign Labour Contracts Act (Chap.88:11)
Immigration (Caribbean Community Skilled National) Act 1996
Industrial Relations Act 1972 (Chap.88:0)
Maternity Protection Act (Chap.45:57)
Minimum Wage Order, Legal Notice No. 40 of 1999
National Insurance Act (Chap.32:01)
Occupational Safety and Health Act 2003
Occupational Safety and Health (Amendment) Act (Act 3 of 2006)
Recruitment of Workers Act (Chap.88: 10)

\textsuperscript{58} Consolidated Index of Statutes and Subsidiary Legislation of Trinidad and Tobago compiled January 2016
ANNEX C. Schedule of Persons Interviewed

February 20 – March 25, 2017

<table>
<thead>
<tr>
<th>MEMBER STATE</th>
<th>DATE</th>
<th>OFFICE/ORGANSATION</th>
<th>NUMBER OF PERSONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>BARBADOS</td>
<td>Feb. 20</td>
<td>CARICOM SECRETARIAT CSME Unit</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Feb. 23</td>
<td>Labour Department</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>March 27</td>
<td>Barbados Workers Union</td>
<td>3</td>
</tr>
<tr>
<td>JAMAICA</td>
<td>March 9</td>
<td>Jamaica Household Workers Union</td>
<td>1</td>
</tr>
<tr>
<td>ANTIGUA &amp; BARBUDA</td>
<td>March 14</td>
<td>Disabled Peoples Int. North America &amp; Caribbean</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Labour Department</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Gender Affairs</td>
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</tr>
<tr>
<td>MONTSERRAT</td>
<td>March 15</td>
<td>Labour Department</td>
<td>2</td>
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<tr>
<td>ST. KITTS &amp; NEVIS</td>
<td>March 16</td>
<td>Gender Affairs</td>
<td>2</td>
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<td></td>
<td></td>
<td>Department of Labour</td>
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<tr>
<td>ST. LUCIA</td>
<td>March 20</td>
<td>Department of Labour</td>
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<tr>
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<td></td>
<td>Crisis Center</td>
<td>2</td>
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<tr>
<td>ST. VINCENT and the GRENADINES</td>
<td>March 21</td>
<td>Youth Affairs Division</td>
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<td>Labour Department</td>
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<tr>
<td>GRENADA</td>
<td>March 22</td>
<td>Grenada National Organisation of Women</td>
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</tr>
<tr>
<td>Country</td>
<td>Date</td>
<td>Organization</td>
<td>Number</td>
</tr>
<tr>
<td>-----------------</td>
<td>------------</td>
<td>----------------------------------------</td>
<td>--------</td>
</tr>
<tr>
<td>TRINIDAD &amp; TOBAGO</td>
<td>March 23</td>
<td>Santa Rosa First Peoples Community</td>
<td>4</td>
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<tr>
<td></td>
<td></td>
<td>National Union of Domestic Employees</td>
<td>1</td>
</tr>
<tr>
<td>GUYANA</td>
<td>March 24</td>
<td>Red Thread</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Department of Labour</td>
<td>1</td>
</tr>
</tbody>
</table>
REFERENCES


Figueroa, Mark. "Gender Privileging and Socio-Economic Outcomes". Conference Paper, Gender and Family in the Caribbean [undated]


