DOMESTIC WORKERS WORLDWIDE:
FOUR COLLECTIVE BARGAINING MODELS

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**INTRODUCTION**

In June of 2010, the New York State legislature made history when it approved the Domestic Workers’ Bill of Rights. In doing so, New York became the first state to pass legislation protecting and granting some basic rights to domestic workers. Nevertheless, the law is but the first step towards obtaining full labor protection for domestic workers. As the next step in the effort to bolster domestic worker rights, domestic worker advocates are seeking to amend New York’s labor laws, specifically the New York State Employment Relations Act (SERA), to explicitly include domestic workers and grant them the right to organize and bargain collectively.

In November of 2010, the New York State Department of Labor prepared a report (NYS DOL Report) that discusses the feasibility of collective bargaining in the New York domestic services industry. The NYS DOL Report concluded that it is possible to amend SERA to grant domestic workers the right to organize and bargain collectively. Additionally, the NYS DOL Report posits that under the SERA amendment, domestic worker bargaining may be overseen by the Public Employment Relations Board, which regulates labor relations between New York employees and employers. At the same time, the report discusses at length the obstacles that must be overcome for domestic workers to bargain collectively, while offering little in the way of concrete solutions.

This report attempts to answer the questions that the NYS DOL Report begs: What collective bargaining models have been successfully implemented in other countries? And, would these models be feasible in the New York context? To that end, the report analyzes and aggregates information on four collective bargaining structures for domestic workers that have been implemented in other countries. The four case studies are Germany, Switzerland, Uruguay, and France. These countries were selected because they have some combination of the following factors: (1) domestic worker union or advocacy group, (2) employer bargaining entity, (3) strong governmental support, or (4) a collective bargaining process that resulted in an agreement.

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3. NYS DOL FEASIBILITY, supra note 2, at 3.
4. Id. The functions of the Public Employment Relations Board include resolving and mediating labor disputes, as well as determining the appropriate bargaining units for organized employees. Id.
5. The French study is briefer than the others. As discussed, none of the researchers were fluent in French and it was difficult to contact primary sources, such as union representatives, for interviews. Accordingly, the section on France is a truncated study that may serve as a useful starting point for future research.
This report aims to find common threads among the models selected as case studies, and explores which aspects of these international models are feasible in the New York and United States labor context. Notably, in all the case study countries, the unions that supported domestic workers collaborated with the government to pass legislation protecting domestic workers. In almost every instance it was the union and governmental partnership that paved the way for the collective agreements protecting domestic workers.

Our report compiles previously disaggregated information on domestic worker organizing models from around the world. The information contained in this report derives from interviews with union representatives and other parties with in-depth knowledge of the collective bargaining agreements in question, as well as from examination of the relevant documents and secondary sources. Almost all of these sources were unavailable in English translation. It should be noted that with the exception of Spanish, the researchers did not speak the languages of the countries in question. Google Translate proved only a partial bridge to understanding. The lack of widely available information is also likely attributable to the historic invisibility of domestic workers around the world. Their exclusion from labor protections is mirrored in their exclusion from recorded accounts. It is our hope that this report will be useful as a first step in the building of more complete case studies, a task that we recommend be undertaken by bilingual researchers.

CASE STUDIES

GERMANY

Germany is a federal republic. Power is divided between the national government and sixteen “federal states.” Since 1955, domestic workers who are members of the union Gewerkschaft Nahrung—Genuss-Gaststätten (NGG) have enjoyed the protections of collective bargaining agreements that are negotiated on both the federal and state levels.

I. Institutional Structures and Social Context

According to the German Constitution (called the “Basic Law”), federal law takes precedence over state law. The Basic Law explicitly protects employment and labor rights. For example, it includes provisions on freedom of association, freedom to choose a profession, the

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6 Again, although the sources this report relies on were not professionally translated, the research group corroborated the information through interviews with union representatives and other parties involved in the collective bargaining negotiation.

7 Although the sources this report relies on were not professionally translated, the research group corroborated the information through interviews with union representatives and other parties involved in the collective bargaining negotiation.


9 Id.
“right to form associations to safeguard and improve working and economic conditions,” and equal treatment under the law.\textsuperscript{10}

Although Germany has specific labor laws, and labor relations in Germany are described as “highly legalized,”\textsuperscript{11} most employment benefits are obtained through collective bargaining between employers’ associations and unions.\textsuperscript{12} The country has a robust organized labor force compared to the U.S. In 2005, collective agreements were in place in 41% of all businesses in western Germany and 23% in eastern Germany. These agreements covered 67% of employees in western Germany and about 53% of employees in eastern Germany.\textsuperscript{13} Yet both union density and collective bargaining coverage have decreased in recent years. Union membership has declined by more than 30% since the 1990s\textsuperscript{14} and, from 1996 to 2005, the number of workers covered by sector collective agreements decreased by 14% in western Germany, and by 25% in eastern Germany.\textsuperscript{15}

During the 20th century, German women were successful in increasing gender equality and equal employment opportunities,\textsuperscript{16} resulting in more women joining the workforce. As women took on professional responsibilities outside the home, they began to hire other women, largely immigrants of color, to perform domestic work.\textsuperscript{17} In 2000, it was estimated that 7.6% of German households employed domestic workers, the equivalent of approximately 2.9 million domestic workers.\textsuperscript{18} The actual number of domestic workers in Germany is difficult to estimate due to domestic workers’ historic isolation from the labor market and because many are immigrants without legal status.

\textsuperscript{10} BASIC LAW FOR THE FEDERAL REPUBLIC OF GERMANY 18, 19 (Christian Tomuschat & David P. Currie, trans., 2010), available at https://www.btg-bestellservice.de/pdf/80201000.pdf (translating Articles 9 and 12 of the German Constitution). Article 3’s principle of equal treatment under the law requires the state to “promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.” Id. at 15.

\textsuperscript{11} Greg J. Bamber et al., An International Review of Key Jurisdictions, in REGULATING EMPLOYMENT RELATIONS, WORK AND LABOUR LAWS: INTERNATIONAL COMPARISONS BETWEEN KEY COUNTRIES 18 (Roger Blanpain ed., 2010).

\textsuperscript{12} The German government is not an active participant in the employment relations system. It also does not participate in the collective bargaining process, despite repeated attempts to institute a tripartite framework in the late 1960s, 1970s, and 1990s. Id. at 18–19.

\textsuperscript{13} Gerhard Bosch et al., Industrial Relations, Legal Regulations and Wage Setting, in LOW-WAGE WORK IN THE WEALTHY WORLD 96–97 (Jérôme Gautié & John Schmitt eds., 2010)

\textsuperscript{14} Bamber et al., supra note 11, at 19.

\textsuperscript{15} Bosch et al., supra note 13, at 96–97.


\textsuperscript{17} Id.

\textsuperscript{18} See id.
II. Parties to the Agreement

German domestic workers are represented by the Gewerkschaft Nahrung—Genuss-Gaststätten (NGG, Food, Beverages and Catering Union). NGG is the oldest German trade union. It was founded in 1865 by cigar makers, but NGG’s members are now generally employed in the restaurant, catering, and hospitality industries. NGG is organized geographically, with local, district, and federal-level councils. Members elect representatives at each level.

Though NGG is the oldest union in Germany, it is also the smallest in terms of membership. The union tends to represent workers who are traditionally vulnerable to exploitation. It is the only union in Germany that includes domestic workers, yet domestic workers make up only a small fraction of NGG’s membership. The union’s strained resources and lack of expertise organizing isolated workers, like domestic workers, has meant that organizing domestic workers has not been a priority for NGG.

In Germany, domestic employers are represented by Netzwerk Haushalt/Berufsverband der Haushaltsführenden (DHB, German Housewives’ Federation). Hedwig Crüsemann Heyl, known as the “Kitchen Strategist,” is credited with forming DHB in the early 20th century. She married a factory owner and, after her husband’s death, ran the factory for several years. While at the factory’s helm, she sought to improve the working conditions of all workers, and focused in particular on training for young women. In 1915, Heyl took charge of Berlin’s “housewives’ club,” which was established in 1873 and advocated against increases in food prices. She united it with similar clubs around the country and affiliated it with cooking and home economics schools. Within a few years, the federation’s membership stood at 45,000 women across sixty-five localities.

As DHB grew, its members focused on the professionalization of traditionally female labor. The federation developed an inspection system for all household appliances and tools, awarding the federation’s seal to devices it found useful, safe, reasonably priced, and not likely to damage the German economy. Today, DHB continues to offer training courses in areas like domestic

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20 Telephone Interview with Karin Pape, Member, NGG (Mar. 15, 2011) [hereinafter Interview with Karin Pape].
21 Charlotte Teller, The Best Known Woman in Germany, 87 INDEP. 187 (1916) (on file with authors).
23 Teller, supra note 21, at 188. She also wrote one of the most successful cookbooks of the era and was instrumental in streamlining government food aid to prevent widespread starvation in Germany during World War II.
24 Interview with Karin Pape, supra note 20.
25 The German House Women’s Union, supra note 22.
26 Id.
skills and home economics and provides classes on becoming a housekeeper or house manager. In addition, as a domestic employers’ association, DHB has represented employers in the negotiation of federal and state-level collective agreements that govern working conditions for domestic workers.

III. The Collective Agreement

NGG and DHB came together for the purpose of domestic worker collective bargaining in response to domestic workers’ exclusion from national labor legislation. In 1952, the German government enacted a nation-wide law regulating workplace conditions. Private homes (and therefore the working conditions of domestic workers) were explicitly exempt from regulation. NGG therefore approached DHB and requested that it register as an employers’ association for the purpose of collective bargaining with regard to domestic workers. DHB agreed, and NGG filed an application with the German Ministry of Labor, requesting that DHB be certified as NGG’s negotiating partner. The Ministry of Labor certified DHB, and even promised that the Ministry would advocate for the workplace law’s amendment if NGG and DHB were ultimately unable to reach an agreement. The bargaining entities did reach a federal “framework” agreement, which controlled holidays and working hours, in 1955. This agreement has been amended and extended since then, and NGG and DHB have since negotiated state level agreements concerning wages.

This case study examines both Germany’s federal-level collective agreement, and the state-level agreement for Lower Saxony. Only domestic workers who are members of NGG are covered by these agreements. NGG members are covered both by the federal agreement and the agreement in their state.

The federal agreement, negotiated between the central committees of DHB and NGG, is considered a “framework” agreement because it covers general issues like termination notice, occupational safety and health, length of the work week, and holidays. The agreement requires employers to provide a written contract and termination notice after a probationary period, which lasts approximately one month. The agreement also sets out a complex schedule of working hours and overtime. It establishes a 38.5 hour working week. Employees who work beyond 38.5 hours per week must be paid an overtime rate of 25% above the normal hourly wage. Employers are required to pay taxes and social insurance contributions. Failure to do so subjects

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27 NETZWERK HAUSHALT/BERUFSVERBAND DER HAUSHALTSSUHRENDE (DHB, German Housewives’ Federation) (translation through Google Translate).
28 E-mail Exchange with Birgit Pitsch, Representative, NGG (April 26, 2011) [hereinafter E-mail Exchange with Birgit Pitsch] (on file with authors) (translation by Karin Pape).
29 Id.
30 Id.
31 The amount of notice depends on how long the employee has been employed. For example, if the employee has been working for the employer for over five years, termination notice is six weeks.
the employer to damages. The agreement also sets standards for occupational safety and health, national holidays, and special occasions on which the worker is entitled to paid time off.

As the federal agreement only covers “framework” issues such as termination notice, occupational safety and health, and national holidays, state-level agreements deal with the specifics of wages. The agreement of the State of Lower Saxony applies to all workers and trainees who do primarily domestic work, nursing, or “counseling.”

32 It covers private households, household service centers, and service agencies. The agreement lays out a rather complicated payment scheme that divides different types of work into various “pay groups” based on job duties and previous experience. The agreement also provides that employees must be paid a yearly bonus, the amount of which is based on the employee’s average earnings in the previous year.

IV. Advantages and Disadvantages of the German Model

The national and state-level agreements guarantee domestic workers protections not otherwise provided by the general labor law. For example, the Lower Saxony agreement specifies wage levels, which is significant because Germany does not have a nation-wide minimum wage.

33 Domestic workers who are party to the agreement enjoy significant vacation time, overtime pay, and bonuses. The federal nature of the agreement means that different states can draft agreements particularly suited to the economic and social conditions in that state, while the national agreement provides a general framework for the negotiations. Furthermore, NGG believes that the agreements serve as benchmarks in legal disputes over wages as several German courts have cited the pay rates outlined in state agreements when deciding cases on domestic workers’ unpaid wages.

34 The presence of a strong employers’ organization is a major positive feature of the situation in Germany. Though domestic workers who are members of NGG are the agreement’s most obvious beneficiaries, employers also enjoy benefits. Individuals who employ domestic workers often do not view themselves as employers per se, so they appreciate that DHB negotiates contracts on their behalf and can help resolve disputes or provide advice on best practices. Furthermore, because of DHB’s unique history (in particular, its ties to the German feminist movement and its drive to have domestic work recognized as work), it has been an appropriate and committed partner for domestic workers and their advocates.

32 It is unclear from the agreement what “counseling” encompasses.

33 Through a quirk of German law, “[a]lthough the Remuneration Agreement [i.e., the Lower Saxony agreement] only covers the parties to the agreement . . . the wage levels it sets are used as a guideline and any wage paid less than this is illegal; any domestic worker, whether a union member or not, can go to court for the minimum wage. The same applies to pension rights.” EUROPEAN TRADE UNION CONFEDERATION, OUT OF THE SHADOWS— ORGANISING AND PROTECTING DOMESTIC WORKERS IN EUROPE: THE ROLE OF TRADE UNIONS 24 (2005) [hereinafter OUT OF THE SHADOWS], available at http://www.etuc.org/IMG/pdf/Rapport_dosmestic_workers-3.pdf.

34 E-mail Exchange with Birgit Pitsch, supra note 28.
The main drawback of the German collective agreements relates to worker coverage. According to Dr. Helena Schwenken, only 39,000 domestic workers are party to the agreements, constituting 1.3% of an estimated 2.9 million domestic workers in the country. An NGG representative confirms that union membership among domestic workers is very low. Because NGG is a small union with limited resources and several different industries to organize, it does not conduct outreach to domestic workers on a large scale. Many domestic workers do not even know that a collective agreement exists or that they can join NGG. This situation is especially problematic for undocumented domestic workers, who are particularly vulnerable to exploitation. Without dedicated outreach to domestic workers in general and migrant workers in particular, coverage will remain low and exploitative conditions will fester.

Lastly, there are many important issues that the agreements do not address. For example, employers are not required to provide a valid reason for termination—they need only give the worker the designated amount of notice. This means that a worker can be fired for any and every reason, including pregnancy.

**SWITZERLAND**

The right to organize and bargain collectively is explicitly provided for in the Swiss Constitution. Yet domestic workers in Switzerland have been so isolated and marginalized that no domestic worker union currently exists. Domestic worker protections are guaranteed by labor agreements unique to Switzerland. These labor agreements were the result of lobbying efforts by Swiss trade unions and the recognition of the Swiss government that domestic workers, by the very nature of the industry, were in need of special protections.

**I. Institutional Structures**

In Switzerland federal ordinances, collective agreements, and standard contracts all play a role in regulating labor standards, including the minimum wage in a given industry. Private labor law governs employment contracts; public labor law regulates minimum standards for worker protection. Collective labor agreements can be extended by the federal government or

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35 E-mail Exchange with Helena Schwenken, Professor, Faculty of Soc. Scis., Univ. of Kassel, Ger. (Feb. 25, 2011).
36 E-mail Exchange with Birgit Pitsch, supra note 28.
38 OUT OF THE SHADOWS, supra note 33, at 2.
cantonal authority\textsuperscript{39} to cover all employers and employees belonging to a given trade or profession.\textsuperscript{40}

There are two large trade confederations in Switzerland, Schweizerischer Gewerkschaftsbund (SGB, Swiss Federation of Trade Unions) and Travail.Suisse Union. Switzerland’s trade unions differ from those in the U.S. in two ways: (1) they are not based on industry; and (2) they do not make a distinction between union members and nonmembers.\textsuperscript{41} Collective bargaining agreements are negotiated for an entire industry, for example the construction industry. In addition, the unions usually work with the government to enact the agreement into law, which makes the agreement binding on all workers within the given industry.\textsuperscript{42}

As of 2007, there are approximately 125,000 domestic workers in Switzerland. Domestic workers come from diverse language and cultural groups. They work long hours and have isolated workplaces. Approximately 10,000 full-time domestic workers are employed in Geneva, of whom 90\% are immigrant women.\textsuperscript{43} Many of them are undocumented workers, who are unlikely to come forward or assert their rights due to concerns over deportation. Among trade unions, domestic work by undocumented immigrants is known as “grey work” because many undocumented workers often pay taxes and make social insurance contributions, but still live and work in the shadows for fear of being deported.\textsuperscript{44} An increasing majority of domestic workers are from European Union (EU) countries and do not face the same kind of immigration issues that non-EU immigrants face.\textsuperscript{45}

\section*{II. Parties to the Agreement}

The key parties in the creation and negotiation of the Swiss agreements covering domestic workers on the state and national level have been unions and government authorities.\textsuperscript{46} Domestic workers and their employers did not actively participate in the legislative or negotiation process that led to the Geneva or national agreements.

\begin{itemize}
\item \textsuperscript{40} Id.
\item \textsuperscript{41} Telephone Interview with Dario Chiaradonna, Trade Unionist, Geneva Coordinator, Unia (Mar. 17, 2011) [hereinafter Interview with Dario Chiaradonna].
\item \textsuperscript{42} Id.
\item \textsuperscript{44} \textit{OUT OF THE SHADOWS}, supra note 33, at 36. This is as opposed to “black work,” which is defined as work that goes undeclared to the necessary authorities. Id.
\item \textsuperscript{45} Although Switzerland is not a member of the European Union (EU), it has signed a bilateral agreement with EU nations which effectively allows citizens of the EU to travel freely to and from Switzerland. Petersen, \textit{supra} note 39.
\item \textsuperscript{46} Interview with Dario Chiaradonna, \textit{supra} note 41.
\end{itemize}
There is no national employer entity in Switzerland. In Geneva there is one employer association, Association des Employeurs d’Employés à Domicile–Genève (HERA, Genevan Association for Employers of Domestic Workers). It was formed by an individual close to Unia and currently consists of approximately thirty to forty employers of cleaning women. HERA does not have members that employ other kinds of domestic workers such as nannies or elderly caregivers. HERA did not play an active role in negotiating either agreement.

There is no specific domestic worker union in Switzerland. However, two unions—Unia and Syndicat Interprofessionnel de Travailleuses et Travailleurs (SIT, Interprofessional Workers Union)—have attempted to organize domestic workers, albeit with little success. Both trade unions have had trouble identifying domestic workers and their employers to engage them in the organizing process.

III. The Collective Agreement

As there are no national domestic worker or employer entities in Switzerland, domestic workers have been extended rights under a standard labor contract, known as a Normalarbeitsvertrag (NAV), rather than via a traditional collective bargaining agreement. A NAV is not a collective bargaining agreement, instead it is a quasi-contract, quasi-statute unique to Swiss law. NAVs are substitutes for collective agreements in industries or occupations where employers or workers do not have a representative entity, or in industries where there are no public laws that protect workers, such as the domestic work industry. As a standard work contract, the NAV sets a minimum wage for industry sectors with no collective agreements. It is binding on the particular sector it regulates. NAVs exist both on the national level and on the cantonal level.

Unlike collective agreements, employers, workers, or unions do not establish the provisions of a national or cantonal NAV. Instead, the Swiss Labor Ministry or a cantonal labor department drafts the NAV. Unions or worker organizations can also propose draft contracts. Once a NAV is drafted, workers’ organizations and employer entities must be consulted. A

48 Unia is the largest trade union under Schweizerischer Gewerkschaftsbund (SGB, Swiss Federation of Trade Unions). Unia is an inter-professional trade union, has over 200,000 members and organizes in the construction sector, industrial sector, craft sector, and service sector. See UNIA, SWITZERLAND’S INTER-PROFESSIONAL TRADE UNION INFORMATION SHEET (2011) [hereinafter UNIA UNION INFORMATION SHEET], http://www.unia.ch/uploads/media/Unia_Praesentation_englisch_Version_4_3.pdf.
49 Telephone Interview with Vania Alleva, Serv. Sector Branch Leader, Unia (Apr. 8, 2011) [hereinafter Interview with Vania Alleva].
51 OUT OF THE SHADOWS, supra note 33, at 36.
tripartite commission is created to review and make changes to the NAV. The commission is 
made up of workers’ groups, employers’ groups, and representatives of the federal or cantonal 
government.53

In 2004, the first NAV covering domestic workers in Switzerland was established in Geneva. 
Unia and SIT pushed successfully for the Geneva NAV, which regulates working hours, paid 
time off, food and accommodation, employment termination, accident insurance, and social 
security payments.54

In 2007, Unia pressured the Swiss government to create the first ever national NAV for 
domestic workers by highlighting the precarious working conditions that domestic workers face. 
The government created a tripartite commission consisting of representatives from the canton 
and national governments, organizations representing employers in the cleaning and hospitality 
sector (as a substitute for employers of domestic workers), and representatives from Unia. 
Because there is no national minimum wage in Switzerland, the group focused on setting a 
minimum wage for domestic workers. The group negotiated the NAV provisions for over a 
year.55 The combination of union pressure and public awareness helped pass the federal NAV in 
2010.

The national NAV establishes a minimum wage for all domestic workers in Switzerland, 
which is set according to the worker’s level of training.56 The federal NAV does not fix working 
hours, holidays and leave, or sick pay because the legislation that permitted the national NAV 
did not authorize those kinds of provisions.57 These areas are covered by the Geneva NAV.

No federal or cantonal administrative system was set up to enforce the cantonal or national 
NAV. However, in theory, the Swiss tripartite commission is in charge of monitoring the 
domestic worker industry and ensuring that domestic worker protections are being upheld. If

53 Id. at 188.
54 See CONTRAT-TYPE DE TRAVAIL POUR LES TRAVAILLEURS AU PAIR, 
http://www.ge.ch/legislation/rsge/fr/s/rsge_J1_50P12.html (Geneva Normalarbeitsvertrag (NAV)) (translation through 
Google Translate). We were not able to obtain detailed information about the specific negotiation process of the 
Geneva NAV but assume that a tripartite commission was established and it was negotiated in a fashion similar to 
the national NAV.
55 Interview with Dario Chiaradonna, supra note 41; Interview with Vania Alleva, supra note 49.
56 For example, workers without government approved training (“untrained workers”) are paid 18.20 Swiss francs 
per hour (“CHF/hour”), untrained workers with 4 years of experience begin at 20 CHF/hour, and workers trained 
through a government approved program with 3 years of experience are paid 22.00 CHF/hour. Alleva & Moretto, 
supra note 43. One Swiss Franc is equal to approximately $1.1294 U.S. dollar. See GOOGLE, MONEY CONVERSION, 
http://www.google.com/search?client=safari&rls=en&q=chf+to+usd&ie=UTF-8&oe=UTF-8 (last visited Apr. 24, 
2011).
57 Interview with Dario Chiaradonna, supra note 41; Interview with Vania Alleva, supra note 49.
employers do not comply with the NAV, domestic workers must go to court and sue their employers for breach of contract.\textsuperscript{58}

IV. Advantages and Disadvantages of the Swiss Model

The Swiss model’s main advantage is that both NAVs apply to all domestic workers, irrespective of union membership or legal status. Unia has worked on educating domestic workers about their rights under the NAVs through flyers, booklets, and media sources such as radio and television. Unia also helps domestic workers go to court to enforce the terms of the NAVs.\textsuperscript{59} One of the Swiss model’s most interesting features is the fact that it combines elements of a collective bargaining agreement with elements of legislation. Its reliance on a tripartite commission of employees, employers, and the government to determine the details of a work contract is likewise noteworthy.

The Swiss model’s disadvantages include the way the agreement was created and promulgated, as well as the lack of efficient enforcement mechanisms. Unia and SIT, along with the Geneva cantonal authority, were the main drivers of the Geneva NAV. Likewise, it was the unions and the federal government who were responsible for passing the national NAV. Domestic workers themselves had little or no input in either agreement. Employers were also not meaningfully involved in the creation of the contract. While the lack of employer participation may have simplified the negotiation process, the long-term effects of excluding domestic worker and employer voices seem likely to outweigh its benefits.

Although the tripartite commissions in each canton are given the task of monitoring compliance with a NAV,\textsuperscript{60} according to Unia, the government is not proactively enforcing the Geneva NAV. Although the national NAV is relatively new, advocates have voiced similar concerns about the enforcement of the national NAV. For both the Geneva and national NAVs, it is up to every domestic worker and employer to know each side’s rights and obligations under the NAV. Under these circumstances, the limited involvement of domestic workers and employers in the creation of the NAVs may have become an impediment to their enforcement.

Lastly, although all domestic workers, including the undocumented, are covered under both agreements and can sue to enforce them, going to court to enforce the NAV exposes undocumented domestic workers to deportation.\textsuperscript{61} Unia recognizes this inherent flaw in the system and is currently working on resolving the issue of residency status for non-EU domestic

\textsuperscript{58} Interview with Dario Chiaradonna, \textit{supra} note 41; Interview with Vania Alleva, \textit{supra} note 49.

\textsuperscript{59} Interview with Dario Chiaradonna, \textit{supra} note 41.

\textsuperscript{60} Alleva & Moretto, \textit{supra} note 43.

\textsuperscript{61} OUT OF THE SHADOWS, \textit{supra} note 33, at 36–37.
employees. Unia and other trade unions are calling for the legalization of undocumented workers in Switzerland.62

URUGUAY

Uruguay is the only country in Latin America where domestic workers have successfully organized and concluded a collective bargaining agreement. This case study discusses the legal and socioeconomic structures and forces that facilitated such a historic achievement. The case study also examines how the collective agreement is enforced, as well as its advantages and disadvantages.

I. Institutional Structures

Uruguay is a constitutional republic. Its most recent constitution, approved in 1967, is very similar to the U.S. Constitution. Uruguay’s 1967 Constitution provides for a strong executive branch, which is subject to legislative and judicial checks.63 There are nineteen departments, which are similar to U.S. states, with limited autonomy.64

Historically, the Uruguayan government has been democratically elected, has actively participated in many facets of the economy, and has supported labor protections and social welfare programs.65 However, in the 1970s the Uruguayan armed forces established a military regime in response to economic and political turmoil.66 The military regime prohibited labor unions and abolished many labor protections.67 The military regime was defeated and a new government was democratically elected in 1984.68 The new government repealed the laws banning labor unions and prohibiting public and private workers from striking.69 The legal changes reinvigorated Uruguay’s labor movement, which enjoyed significant political influence until the early 1990s when the country began to experience a pronounced industrial decline.70

62 Id.; Alleva & Moretto, supra note 43.
64 Id.
65 Id.
66 Id.
68 Uruguay, U.S. DEP’T OF STATE, supra note 63; see also Uruguay: Labor Unions, supra note 67.
69 Uruguay: Labor Unions, supra note 67.
70 Id.; see also Maite Burgueño, Laura González & Gustavo Machado, Intimidades en la Sociedad de Clases: Trabajo Doméstico, Organización Sindical y Reproducción 7–8 (Apr. 23, 2010) (unpublished manuscript) (on file with authors); Telephone Interview with Nora Pacheco, Member, Sindicato Único de Trabajadores Domésticos del Uruguay (Mar. 24, 2011) [hereinafter Interview with Nora Pacheco].
The ensuing economic crisis resulted in mass unemployment and decreased the unions’ political clout and membership levels.71

A. Labor Protections in Uruguay

Uruguayan law requires all employers, including those employing domestic workers, to register employees with the Banco de Prevision Social (BPS, Social Welfare Bank).72 The registration process ensures that the employer and employee make monthly payments to the employee’s pension and health fund.73 Additionally, registered employees receive paid time off based on the terms negotiated in their employment agreement. Employees who are not registered do not enjoy any of the pension or health fund benefits.74

In 2006, the adoption of Law No. 18.065 at the national level put domestic workers on par with other salaried workers and paved the way for the collective bargaining process.75 The law sets norms for the regulation of domestic work. It defines domestic work, sets an eight hour day and a forty-four hour week, and provides for paid time off, severance, unemployment insurance, and social security coverage.76 Importantly, in addition to the law’s minimum protections, employers and employees can always negotiate higher wages and paid time off.77

The law changed the political and economic landscape. Before its enactment, out of an estimated 90,000 domestic workers, only 25,000 were registered with the BPS.78 After the 2006 law, registration of domestic workers significantly increased. The domestic worker population is currently estimated at approximately 110,000, and 60,000 of them are registered.79

71 See, e.g., Burgueño, González & Machado, supra note 70, at 8; infra note 113.
73 The health coverage is similar to disability insurance in the U.S., as an employee receives a certain percentage of his or her salary upon a certification by a doctor stating why and for how long the employee cannot work. Banco de Prevision Social (BPS) payments are currently divided as follows: 18% paid by employee and 7.5% by employer. Interview with Nora Pacheco, supra note 70.
75 See generally LEY No. 18.065, supra note 72.
76 Id.; see also SINDICATO ÚNICO DE TRABAJADORAS DOMÉSTICAS (SUTD) URUGUAY, SEMINARIO SINDICAL SOBRE MUJERES MIGRANTES TRABAJADORAS DEL HOGAR DE PARAGUAY A LOS PAÍSES DEL MERCOSUR (2007) (on file with authors).
77 Interview with Nora Pacheco, supra note 70.
78 Id.; see also CONFEDERACIÓN SINDICAL DE TRABAJADORES Y TRABAJADORAS DE LAS AMÉRICAS, ORGANIZACION DE TRABAJADORAS DEL HOGAR 83 (2010) [hereinafter CONFEDERACION].
79 Interview with Nora Pacheco, supra note 70; see also Silvana Silveira, Uruguay: For Domestic Workers, Rights Are Hard To Exercise, ALLBUSINESS (June 8, 2009), available at http://www.allbusiness.com/labor-employment/working-hours-patterns-overtime/12509780-1.html.
Finally, in 2009, Law No. 18,566 changed Uruguay’s basic labor law. The new law explicitly guarantees all workers, including domestic workers, the right to collective bargaining. It also details the various methods through which the government, employer entity, and employee representative may initiate the collective bargaining process, and establishes the scope of collective bargaining agreements.

B. Domestic Work in the Uruguayan Context

Throughout Uruguayan history, social and cultural bias affected the ability of domestic workers to enjoy benefits under the law, as domestic work was not perceived as dignified work deserving the formal protections granted to other salaried employment. Accordingly, employers registered their domestic workers with the BPS at a much lower rate than other employees. With the election of a new progressive government in 2005, the marginalization of the domestic worker population was recognized. This recognition paved the way for the 2006 law. To increase the impact of the law, the government led a very proactive campaign to raise awareness of domestic workers’ rights, including television advertisements. The Sindicato Único de Trabajadores Domésticos (SUTD, the Sole Union for Domestic Workers) also undertook intensive member training through workshops and pamphlet distribution in various communities to educate the population about the law and its significance. Additionally, the social sciences department of the National University of Uruguay began a two-year study about the domestic services industry, domestic workers, and the law’s impact.

II. Parties to the Collective Agreement

The domestic worker collective bargaining agreement was reached through a tripartite structure. The rich history of attempts to organize domestic workers in Uruguay, in conjunction with the election of a progressive government, and a recent increase in cultural awareness regarding the value of domestic work, facilitated the negotiation of the collective bargaining agreement.

A. The Domestic Workers’ Entity: SUTD

The Sindicato Único de Trabajadores Domésticos existed long before its reorganization as a union in 2005. Its history traces back to the 1960s when a group of domestic workers began to

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81 Id.
82 Milton Castellano, LA NEGOCIACIÓN COLECTIVA EN EL URUGUAY (2009) (on file with authors).
83 See Burguéño, González & Machado, supra note 70; Interview with Nora Pacheco, supra note 70.
84 See supra text accompanying notes 75–77.
85 See Burguéño, González & Machado, supra note 70; see also UNIVERSIDAD DE LA REPÚBLICA, PROGRAMA DE VINCULACIÓN CON EL SECTOR PRODUCTIVO, MODALIDAD 2 (2008) (on file with authors) (project proposal).
meet in local parishes to attempt to organize a union to fight for labor rights. During this period, most domestic workers came from Uruguay’s rural interior, possessed a patriarchal deference toward employers, and were reluctant to form or join a union. Nevertheless, the older domestic workers insisted on the necessity of organizing. With advice from the Christian Workers’ Association, the group chose to name itself the Maria Goretti Sector.

Through its various iterations in the 1960s and 1970s, SUTD’s predecessors continued to provide a gathering place and outlet for domestic workers to share their frustrations and continue their attempts to organize into a union. Over time, the group’s membership extended from Montevideo into the interior of the country. Political and economic hardships in the 1980s and 1990s also increased the group’s membership. For example, many workers in the industrial sector lost their jobs and became domestic workers. Many of these new domestic workers had been union members in their previous industries. They continuously pushed to change domestic workers’ mentality that it was too difficult to organize due to employer dispersion and worker isolation. These workers’ efforts and changes in the political environment culminated in SUTD’s reorganization as union in late 2005.

In 2006, when the new Uruguayan president, Tabaré Vázquez, signed Law No. 18.065, he called for a wage board to be assembled to consider the issue of domestic workers’ salaries. Wage boards are government-established committees, which monitor salary negotiations between unions and employer entities. In order to convene a wage board, an employer entity and an employee entity must exist. Although SUTD had reorganized as a union to represent

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86 During this period, Uruguay’s military regime prohibited unions, and the group, as well as a priest advising it, were persecuted. See Sindicato Único de Trabajadores Domésticos, Historia del SUTD [hereinafter Historia del SUTD] (unpublished manuscript) (on file with authors).
87 The name was chosen to honor Maria Goretti, a poor peasant who died at the hands of her father’s employer’s son in an attempted rape. She was canonized in 1950. See ST. MARIA GORETTI, http://www.mariagoretti.org/mariabio.htm (last visited March 29, 2011). The initial group name, Maria Goretti Sector, changed over time to Asociación de Empleadas de Casas Particulares (ANECAP, Private Home Domestic Workers’ Association), then to the Asociación Laboral de Empleadas del Servicio Domestico y Afines (ALESA, Domestic Service Employees’ and Affinities Labor Association).
88 For example, a result of international and national support, SUTD’s predecessors were able to buy a building to serve as a meeting place. The group also sponsored crafts workshops, which allowed members to sell their crafts in local fairs, forge a stronger sense of community, and raise funds to sustain the group. Through these efforts, the group was able to fund a team of lawyers, psychologists, and social workers to work with the members. See Historia del SUTD, supra note 86.
89 Before its reorganization as union, SUTD functioned as an organization for domestic workers, like Domestic Workers United (DWU). When SUTD reorganized as union, it joined the Plenario Intersindical de Trabajadores y Convención Nacional Trabajadores (PIT-CNT, Workers Interunion Plenary and National Convention of Workers), Uruguay’s federation of labor unions, which provides substantial institutional and administrative support. Interview with Nora Pacheco, supra note 70.
90 Id. Relatedly, under national law, employers are required to pay and give employees time off to attend wage board meetings. Id.
domestic workers in the wage board, the wage board could not be established because an adequate employer entity did not exist.\textsuperscript{92}

\textbf{B. The Employer Entity: Liga de Amas de Casa, Consumidores y Usuarios del Uruguay}

On June 29, 1995, a group of women founded the Liga de Amas de Casa, Consumidores y Usuarios del Uruguay (LACCUU, the Uruguayan League of Homemakers and Consumers) as a non-profit organization representing housewives and consumers, since there were no organizations in Uruguay representing these groups’ interests.\textsuperscript{93} The group sought to obtain pension benefits for housewives and to defend the rights of consumers.\textsuperscript{94}

In early 2008, responding to the representative vacuum in the face of the president’s call for a domestic worker wage board, LACCUU embraced another objective—to become the entity representing employers of domestic workers in wage board negotiations.\textsuperscript{95} Our research indicates that the motivating factor for LACCUU’s participation was progressive politics, not their members’ interests as employers of domestic workers.\textsuperscript{96} The organization’s new objective received majority support from its membership. Subsequently, LACCUU memorialized its agreement to become the employer representative in a letter in which LACCUU set forth its goals and conditions for its participation as the employer representative.\textsuperscript{97} The LACCUU’s goal for the collective bargaining process was to normalize and formalize standards for domestic work, like those enjoyed by other salaried workers in Uruguay.

\begin{footnotesize}
\textsuperscript{92} See Burgueño, González & Machado, supra note 70, at 7–8; Interview with Nora Pacheco, supra note 70.

\textsuperscript{93} The bylaws of the Liga de Amas de Casa, Consumidores y Usuarios del Uruguay (LACCUU, the League of Homemakers and Consumers) were eventually changed to admit male members. The change significantly increased LACCUU’s membership, which amplified its ability to effect change. E-mail Exchange with Mabel Lorenzo de Sánchez, President, Liga de Amas de Casa, Consumidores y Usuarios del Uruguay (Apr. 14, 2011).

\textsuperscript{94} In 2000, the organization successfully advocated for a consumer protection law, Law No. 17.250, which includes product safety, deceptive advertisement, and fraud provisions, among others. LEY 17.250, DEFENSA DEL CONSUMIDOR, http://www.parlamento.gub.uy/leyes/AccesoTextoLey.asp?Ley=17250&Anchor= (last visited Apr. 22, 2011). Despite many political campaign promises, LACCUU has not been able to obtain pension benefits for housewives. E-mail Exchange with Mabel Lorenzo de Sánchez, supra note 93.

\textsuperscript{95} Burgueño, González & Machado, supra note 70, at 8.

\textsuperscript{96} In a phone interview with LACCUU’s president, Mabel Lorenzo de Sánchez, she reiterated the organization’s sense of social responsibility and the importance of protecting the unique relationship that domestic workers have with their employers. As such, it was important for each party, domestic workers and employers, to know each side’s rights and obligations. Telephone Interview with Mabel Lorenzo de Sánchez, President, Liga de Amas de Casa, Consumidores y Usuarios del Uruguay (Apr. 18, 2011) [hereinafter Interview with Mabel Lorenzo de Sánchez].

\textsuperscript{97} Id. The letter states that should another entity better suited to represent employers’ interests arise and wish to represent employers during wage board negotiations, then LACCUU will step down. Id.
\end{footnotesize}
III. The Collective Agreement

After both the employer representative and the employee entity were formed, the domestic worker wage board was convened by the President, through the Ministerio de Trabajo y Seguridad Social (MTSS, Employment and Social Security Ministry), and tripartite negotiations began. On August 19, 2008, the parties arrived at the first collective bargaining agreement. This initial agreement was valid for two years. It set minimum wages and increases, required severance pay, and provided for overtime and early termination payments. It also banned sexual harassment and established minimal working conditions, among other very specific clauses. Importantly, the collective agreement was extended to cover all domestic workers in Uruguay. The SUTD believes that national extension is key to ensure minimum wage parity throughout the country, as domestic workers in interior states tend to be substantially underpaid.

In July 2010, as the first agreement was set to expire, another wage board was assembled and the parties began to negotiate the second collective agreement. Reportedly, this process was more contentious than the initial agreement, as the government representative and SUTD demanded a substantial increase of the minimum wage level set in the 2008 agreement, maternity leave, and other improved provisions. Accordingly, LACCUU had to analyze the demands carefully to determine how to broach a compromise that would adequately represent employers’ interests. Much back and forth preceded the final agreement on December 17, 2010. The second collective bargaining agreement is significantly stronger than the first, providing substantial increases and adjustments to the minimum wage levels in the 2008 agreement. In addition to the improved provisions, the 2010 collective bargaining agreement renews the guarantees in the 2008 agreement and was also extended at the national level.

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99 For example, the agreement required certain bonus payments to domestic workers based on length of employment, and contained aspirational provisions regarding good faith negotiations and social peace. CONVENIO 2008, supra note 98, at 5–6, 8.

100 Interview with Nora Pacheco, supra note 70.

101 For example, requiring the employer to pay the domestic worker when he/she shows up for work and the employer is not there, or when the employer informs the domestic worker not to come on a specific day. Id. See generally COSTO PERO SALÍÓ: ACUERDO SALARIAL EN GRUPO DE SERVICIO DOMÉSTICO, LA DIARIA (Dec. 20, 2010), http://ladiaria.com/articulo/2010/12/costo-poro-salio/; NO TODO RELUCÉ: SIN ACUERDOS POR AHORA EN GRUPO SERVICIO DOMÉSTICO, LA DIARIA (Nov. 30, 2010), http://ladiaria.com/articulo/2010/11/no-todo-reluce/.

102 Interview with Mabel Lorenzo de Sánchez, supra note 96.

103 COSTO PERO SALÍÓ, supra note 101.

104 REPÚBLICA ORIENTAL DEL URUGUAY, CONVENIOS COLECTIVOS: GRUPO 21—SERVICIOS DOMÉSTICOS (2010) [hereinafter CONVENIO 2010], available at http://www.cotidianomujer.org.uy/trabdom_convenio10.pdf; Interview with Nora Pacheco, supra note 70. A continued point of contention is the exclusion of domestic workers from Uruguayan Law No. 17.940, which protects unionized workers by granting them time off, paid by the employer, to discharge administrative union duties. A SUTD proposal, which would have required employers to deposit $3 Uruguayan pesos to BPS for this purpose was rejected during the latest negotiation. This will continue to be a
The Uruguayan Ministerio de Trabajo y Seguridad Social is charged with enforcing the law. Domestic workers can initiate a grievance against an employer by filing a complaint with MTSS. MTSS lawyers are appointed for workers who have no legal representation. However, it is very difficult to get in touch with these attorneys, making it more likely for workers’ complaints to get lost in the bureaucracy, or for workers to get confused or discouraged before seeing the process through. SUTD members benefit from the union’s volunteer lawyer’s legal advice.

Additionally, the Inspección General del Trabajo y la Seguridad Social (IGTSS, General Inspectorate of Employments and Social Security), an agency under MTSS’s auspices, is authorized to inspect places of employment, including private residences, in order enforce domestic workers’ rights. The agency has broad authority to enforce labor laws and workplace standards. Currently, IGTSS is targeting high-end neighborhoods to investigate whether domestic workers are registered with the BPS. There is no initial penalty for having a non-registered employee. Inspectors keep detailed records and go back after a period of time to check if the employers have complied.

The government is also investigating and trying to establish a mechanism to protect undocumented workers. Law No. 18.250, passed in 2008, guarantees foreign workers the same legal protections as Uruguayan citizens. The collective bargaining agreement explicitly states that it covers all workers without reference to status. The current Uruguayan President, José Mujica, has also stated that foreign domestic workers must be treated like citizen workers in order to protect them from continued exploitation.

IV. Advantages and Disadvantages of the Uruguayan Model

The most attractive aspect of the Uruguayan collective bargaining agreement is its extension at the national level. This is an extremely important feature because it allows all workers to benefit from the collective bargaining agreement irrespective of union membership. By covering

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105 Interview with Nora Pacheco, supra note 70.
106 MERCOSUR DOMESTIC WORK REGIMES, supra note 74, at 79–81.
107 Neighborhoods are chosen at random and inspectors change neighborhoods frequently once it becomes known that inspections are occurring in an area. Interview with Nora Pacheco, supra note 70
108 This is a recent development. Id. The government and SUTD meet periodically to discuss progress of the enforcement mechanisms. Id. SUTD recognizes the precarious situation of undocumented workers and therefore supports the inclusion of all domestic workers in any agreement. Id.
110 CONVENIO 2008, supra note 98.
all workers without regards to union membership or citizenship status, the agreement greatly reduces the potential for abuse.

Furthermore, with the election of left-of-center candidates to the Uruguayan presidency starting in 2005, the political context has fostered SUTD’s growth and strength by providing support for the domestic services sector through open communication channels and progressive politics. The government’s ability and commitment to assemble wage boards was essential to the ultimate negotiation of a collective agreement.

Some of the features that make the Uruguayan collective bargaining agreement particularly attractive also contribute to its disadvantages. Under a different and less supportive government, the current structure is likely to be less viable. National extension may also make compliance with the agreement’s wage levels particularly difficult in interior states. Because the cost of living tends to be lower in those states and the agreement does not allow for downward deviations from the agreed minimums, it is likely that some employers of domestic workers may no longer be able to afford to pay their workers. This situation is problematic because it displaces both employers and domestic workers from the formal market. Additionally, the short term of the collective agreements, usually two years, requires frequent negotiation and may contribute to the contentiousness of subsequent rounds.

Finally, despite SUTD’s current vibrancy in the political framework, its low membership numbers endanger its ability to continue making strides in a different political context, because SUTD does not collect enough membership dues to fund advocacy efforts. The union currently has approximately 1000 members, but membership in SUTD is not required to enjoy the collective agreement’s benefits. Increasing membership will continue to be a challenge both because of this free rider problem and because employers do not want to hire union members.

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112 Since 2005, left-of-center candidates have been elected as president and also to the Uruguayan legislative branch, resulting in a left-of-center coalition that controls the legislature and has been a strong supporter of domestic workers’ rights. Burgueño, González & Machado, supra note 70, at 7; see also Uruguay, U.S. DEP’T OF STATE, supra note 63; Interview with Nora Pacheco, supra note 70.

113 Wage boards had not been assembled for any industry since 1991, which contributed to the deterioration of labor protections, diminished union participation in the labor force, and decreases in real wages. Burgueño, González & Machado, supra note 70, at 7. As such, the leftist government’s commitment to wage boards was significant. Id.

114 The short duration of the collective agreements may also be an advantage since it gives parties flexibility to respond to changed economic circumstances.

115 For example, Nora’s employer of many years just recently found out Nora was a member of SUTD. She only told them so they would not be surprised when they saw her on TV during news reports on the latest collective bargaining negotiations. Interview with Nora Pacheco, supra note 70.
FRANCE

Please note that what follows is a brief summary of the French system, rather than a complete case study. The language barrier, lack of documents in English, and the absence of primary sources impeded our development of a fuller description in the case of France. We hope that this summary provides a useful starting point for future research.

Since the early 1990s, the French government has encouraged the “professionalization” (or bureaucratization) of domestic work, as a means of job creation. For example, the government has given employers tax exemptions, reduced their expected contributions toward social welfare on behalf of their employees, and simplified recruitment formalities. The government also established the l’Agence Nationale des Services à la Personne (ANSP, National Agency for Personal Services) to coordinate public policies in this sector. Additionally, employers are encouraged to use a voucher system to pay their domestic workers. Employers purchase voucher booklets from the government and pay their domestic workers with voucher tickets redeemable for payment at a bank. This system permits the government to monitor domestic workers’ earnings and to deduct funds for the workers’ contribution to the social security system. The voucher system has not been a success. One study shows that only about 7% of households use the system to pay for domestic work.

Despite the highly legalized structures governing domestic workers in France, much of France’s domestic work economy remains underground. As Jean Marc Olivier, Federal Secretary of the Commerce and Services section of the Confédération Générale du Travail (CGT, General Confederation of Labor) stated:

Officially, there are about 1.6 million paid domestic workers in France. But these are the official figures, and all observers estimate that at least of 50% of the work is undeclared. What is more, there are more employers in this sector than there are employees—we know, for example, of one domestic worker getting pay from 13 different employers each month.

A 1997 study found five undeclared workers for every one declared worker in household services. Many are immigrants and do not have the necessary documents to be declared workers. Some choose not to be declared because they earn more money by not having to pay

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117 Id.
119 Id.
120 Id.
121 OUT OF THE SHADOWS, supra note 33, at 25.
122 Id. at 11.
social security taxes. Others have employers who do not declare them because they do not want to make social security and other contributions on behalf of their domestic workers.

In France, two main collective agreements govern the relationship between private employers and domestic workers. Like many European countries, France automatically extends the terms of a collective bargaining agreement to cover all workers formally declared in an industry, whether they are union members or not.

One of these agreements, the Convention Collective Nationale des Salariés du Particulier Employeur (Private Employers National Collective Agreement), covers situations where the homeowner pays the domestic worker directly and is thus her legal employer. This agreement requires paid sick, personal, and vacation days, advance termination notice, and severance pay. It was negotiated in 1999 by Fédération Nationale des Particuliers Employeurs, (FEPEM, National Association of Private Employers) and the four main trade unions in this sector.

The second agreement, the Convention Collective de l’Aide à Domicile (Collective Agreement for Domestic Help), covers domestic workers who are employed by non-profit organizations and placed in private homes. In such situations, the non-profit agencies handle all interactions with the domestic worker, including hiring, dispute resolution, and termination. The Collective Agreement for Domestic Help was signed into law on May 11, 1983 and is composed of different industry-specific agreements. The Ministry of Labor is looking to consolidate these various agreements by 2012.

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123 E-mail Exchange with Anonymous Source (Apr. 13, 2011) (on file with authors).
126 This includes both workers who are hired directly by the individual employer, and workers who are placed by an employment agency but are paid by the individual employer. In the latter case, the agency retains responsibility for record-keeping—that is, the agency is not involved in dispute resolution, but handles all paperwork.
127 Confédération Française Démocratique du Travail (CFDT, French Democratic Confederation of Labor); Confédération Générale du Travail (CGT, General Confederation of Labor); Confédération Française des Travailleurs Chrétiens (CFTC, French Confederation of Christian Workers); and Confédération Générale du Travail—Force Ouvrière (FO, General Confederation of Labor—Worker’s Force). See Devetter & Rousseau, supra note 116, at 299.
128 E-mail Exchange with Annie Dussuet, Sociologist, Nantes Univ. (Mar. 18, 2011) (on file with authors).
129 The non-profit organizations are the legal employers of the domestic workers. They sign contracts with the workers, negotiate their salaries, manage sick leave, provide replacements, etc. These agencies also sign contracts with the homeowners, who authorize the non-profit to place domestic workers in their residences and handle all aspects of the relationship. See FÉDÉRATION DES ASSOCIATIONS DE L’AIDE FAMILIALE POPULAIRE, http://www.fnaafp.org/nos-services.html (last visited Apr. 22, 2011) (translation through Google Translate).
130 The signatories include National Federation of Associations of People with Family (FNAAFP-CSF); National Federation of Associations for Assistance to Mothers and Families at Home (FNAAMFD); National Federation of Careers in Activities Together (FNAADAR); National Federation Caregiver at Home (FNAFAD); National Union of Associations of Care and Services at Home (UNASSAD) which has since become
For-profit domestic worker agencies are on the rise in France. Domestic workers employed by for-profit firms are not covered by the Collective Agreement for Domestic Help, but they are covered (as all workers theoretically are) by the French Labor Code. Although these for-profit agencies currently make up less than 5% of the market, their growth has raised concern among advocates because they appear to target vulnerable migrant women. These workers have difficulty advocating for their rights because they lack legal status and a direct legal relationship with the person in whose home they work.

**POTENTIAL LESSONS FOR NDWA**

Important characteristics of the collective bargaining regimes in the case study countries include the presence of employer representative entities, tripartite negotiation structures, and national extension. These features, along with enforcement mechanisms, are analyzed in turn to determine the lessons that they offer to domestic worker organizing in New York State.

**I. Employer Representative Entities**

An important lesson of these case studies is that the participating employer organizations represented only a small fraction of employers of domestic workers. Where a strong employer representative was lacking, as in France and Switzerland, the government called on entities representing similar interests (such as cleaning industry representatives) or created working groups of various government and private sector participants to negotiate with the domestic workers’ union. Unfortunately, domestic workers themselves were likewise minimally involved in some of the case studies. Far more critical to the negotiation of collective agreements was the work of concerned citizens, many of whom were progressive women, unions who sought to improve the conditions of domestic work, and supportive governments.

In Germany and Uruguay, where strong employer representative entities were in fact crucial in negotiating the collective bargaining agreements, the representative organizations were

131 Id.
132 E-mail Exchange with Annie Dussuet, *supra* note 128.
133 The French Labor Code includes the following provisions: a working week of 35 hours and a working day not to exceed ten hours, guaranteed overtime, and minimum wage of 1,321 Euro per month (roughly $1,910 U.S. dollars which comes out to about $13.64/hour). In France all workers have a right to paid leave once they have worked at least one month during the year. Workers are then entitled to two-and-a-half working days leave for each month worked and five weeks of paid leave per year worked. France has ten public holidays. *Labor Law in France, CONFÉDÉRATION FISCALE EUROPEENNE*, http://www.cfe-eutax.org/taxation/labor-law/france (last visited Apr. 22, 2011).
primarily motivated by progressive politics, rather than their interests as employers of domestic workers. This facilitated the negotiation process, as the employer entities understood the importance of extending labor protections to this historically marginalized worker group.

In New York, Park Slope Parents and Jews for Racial and Economic Justice are two organizations that are attuned to the domestic service sector’s unique needs and are thus well-suited to represent employers of domestic workers. It was interesting to see that similar groups in other countries represented employers for the purposes of bargaining.

II. Tripartite Negotiation Structures

The Swiss and Uruguayan models illustrate the benefits of a tripartite negotiation scheme. In both of these countries, a tripartite commission of employees, employers, and the government bargain to arrive at a collective agreement. In these instances, the support of a government body that respects the challenges domestic workers face was key in balancing what otherwise might have been an inequitable bargaining arrangement. Because domestic workers have had historically little bargaining power, government participation in negotiations helps ensure that the final agreement is fair. Moreover, a tripartite approach allows for the possibility that the government representative on the commission could transition into a monitoring body, responsible for ensuring that the agreement’s provisions are upheld.

In the New York context, an organization like Domestic Workers United is poised to serve as the employee representative, because it already has an active base and is aware of domestic workers’ particular needs. Similarly, employer groups such as those discussed above may be able to represent the private sector. However, achieving the political support required to establish a tripartite structure will be challenging. SERA would first have to be amended accordingly, and additional legislation establishing a tripartite commission as the negotiating structure and creating a subsequent monitoring entity would need to be passed.

III. National Extension

Three of the models (Uruguay, France and Switzerland) extend the collective agreement to the national level—that is, the agreement becomes a quasi-legislative document that covers all workers in the industry it governs. National extension is important because of domestic workers historic bargaining inequality and the scarcity of employer representative entities.

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135 NYS DOL Feasibility, supra note 2, at 18.
136 Domestic workers’ organizations at the community level, like DWU, may serve as potential bargaining units and also, potentially, as participants in enforcement structures. By giving these organizations an official role within the law, the New York State can build on their expertise and extend its reach in the community. Janice Fine & Jennifer Gordon, Strengthening Labor Standards Enforcement through Partnerships with Workers’ Organizations, 38 J. Pol. & SOC’Y 552, 557–58 (2010).
National extension does not exist in the U.S. context. Although extension of collective bargaining agreement benefits may be easier to imagine at the New York State level, it would be challenging to achieve. The only way an agreement can be enforced across an entire industry in New York is if the New York State legislature takes the terms of the negotiated contract and makes them into law. This would be the equivalent of passing a new domestic workers’ bill of rights with much higher substantive standards. Considering that it took years for the New York State legislature to pass only the most minimum of standards, it seems unlikely it would act again in such a sweeping and unprecedented way. Accordingly, state-level extension of a collective bargaining agreement for domestic workers will likely require even more resources and political capital than it took to pass the current domestic workers’ bill of rights.

In addition, the NYS DOL Report reflected concerns that a collective agreement would displace some consumers of domestic services. Because collective agreements tend to set minimum wage standards, in an extension environment, some current employers of domestic services would likely be pushed out of the formal employment market.

IV. Enforcement

The models profiled in this report each approach enforcement differently.

The Uruguayan agreement explicitly appoints a government agency, MTSS, to enforce the agreement. The agreement gives MTSS broad authority to determine an appropriate enforcement mechanism. The Uruguayan enforcement mechanism is quite comprehensive, as it provides for both an MTSS administrative dispute adjudication procedure, and for on-the-ground inspections through IGTSS.

In contrast, the Swiss agreement does not establish an enforcement agency. The Swiss tripartite commission is theoretically responsible for ensuring that the NAV’s protections for domestic worker are being upheld, but in reality it has not played that role. Because there is no regulatory framework for enforcement, employers and domestic workers must rely on the courts to enforce the NAV. Given domestic workers’ vulnerability and lack of power, exclusive reliance on the judicial system for enforcement makes it harder for domestic workers to demand compliance with the NAV. The Swiss model demonstrates how difficult it is to enforce an agreement without meaningful government involvement.

In New York, the Uruguayan approach would suggest designating the NYS Department of Labor as the body charged with enforcement of the collective agreement. This method does not create a new government agency; however, it would require additional personnel and potentially
the establishment of a special bureau to conduct on-the-ground investigations and pursue claims.\textsuperscript{137}

**CONCLUSION**

Like in many of the case studies where participants began organizing efforts on a small scale, in New York an incremental approach to domestic worker organizing will likely be necessary.

In order to implement any of the models discussed in this report, SERA should be amended to allow domestic workers to organize into a union and bargain collectively. Then, DWU could choose a few pilot neighborhoods in New York City—for example, Park Slope, the Upper West Side and Washington Heights. Associations sympathetic to the cause of domestic worker organizing (Jews for Racial and Economic Justice, Park Slope Parents Association) could serve as the employer entity, and DWU could negotiate on behalf of workers. All negotiations could be done on the neighborhood level to ensure manageability. In addition, neighborhood-level bargaining would help ensure that the income disparities between neighborhoods would not result in wage agreements that lower-income employers could not afford.

Later, by drawing on the success of its pilot programs, DWU could approach the New York legislature and request its support in the negotiation of a state-wide “framework” agreement that covers issues like working hours, termination notice, and holidays. The smaller neighborhood-level agreements could be expanded as more employer associations are identified and as NDWA builds its organizational capacity.

Though there are obstacles in the way of successful domestic worker organizing in New York, important building blocks for domestic worker collective bargaining are already in place. In fact, New York has a significant advantage over several of the countries we examined, in that domestic workers themselves are organized here, and also have built strong advocacy networks committed to advancing their interests. The moment is ripe to harness the momentum from the passage of the Domestic Workers’ Bill of Rights to remove the remaining legislative and social obstacles, and finally to obtain the collective agreements domestic workers in our state deserve.

\textsuperscript{137} It would probably also be difficult to get New Yorkers comfortable with the idea that inspectors would be authorized to visit private residences to investigate compliance.