

# Domestic work

## Neglected heart of global economy

In May 2010 the Domestic Workers' Research Project together with the Social Law Project at the University of the Western Cape held a conference on domestic workers in Cape Town. **Ray Mungoshi** records some of the inputs and discussion which highlighted an urgent need to look at the wages and conditions of this most neglected sector.

It is consequently a sad measure of contemporary society that despite domestic work being at the heart of the global economy, they remain invisible, grossly underpaid, overworked and unprotected. This is mainly because their work does not take place in a factory or an office, but mainly in private homes, shielded from prying eyes.

According to the International Labour Organisation (ILO), the past two decades have witnessed a huge jump in demand for care work everywhere owing to 'massive incorporation of women in the labour force, the ageing of societies, the intensification of work and the frequent lack or inadequacy of policy measures to facilitate the reconciliation of family life and work'.

'... domestic work is undervalued in monetary terms and is often informal and undocumented. It tends to be perceived as something other than regular employment, as not fitting the general framework of existing labour laws... As a result, the domestic employment relationship is not specifically addressed in many legislative enactments, thus rendering domestic workers vulnerable to unequal, unfair and often abusive treatment,' commented an ILO paper.

### SA DOMESTIC LAWS

In September 2002 the South African government, unlike many governments worldwide, took steps towards easing the hardships of the country's roughly one million domestic workers when it extended formal labour protection rights.

**H**ester Stephens, who attended the conference, has suffered deprivation, pain and isolation in equal doses. In an interview she said, 'My dream was to become a teacher but we were a family of ten and I had to drop out of school to support my family. I became a domestic worker at the age of 15.

'I had to leave my son with my parents and only years later did he come and live with me. But we never really had the relationship a mother and son should have because I was never really there for him. The distance and time we spent apart changed a lot of things and he never called me mother because I was never with him.'

Stephens (62), now president of the South African Domestic Workers Union (Sadsawu), turned to trade unionism in 1984 to improve the conditions of domestic workers, derisively called 'girl' and 'boy' during apartheid.

Domestic workers are at the

centre of global wealth - mothering and nurturing the world economy. For millions of workers around the world, mainly women, domestic work is their only source of sustenance. They scrub floors, do laundry, cook and care for employers' children and release their female bosses to take work in mainstream employment that adds value to national economies.

'Large amounts of work that women perform in this country are not counted as contributing to GDP (Gross Domestic Product) and as a country we don't value work that is regarded as women's work. So, for example, in terms of child care across this country, there is no state provision and those who provide child care in the main are domestic workers for the middle class and the rich and in some instances for other working-class women... but society doesn't value that,' says Human Rights Commissioner Pregs Govender.

These included the right to a written contract, minimum wages, paid leave, severance pay and notice prior to dismissal through 'Sectoral Determination Number 7, The Domestic Worker Sector'.

The law also required employers to register their domestic workers with the Unemployment Insurance Fund (UIF). Workers can now tap into the fund when unemployed which is a significant new right.

Other labour such as the Labour Relations Act (LRA), which provides for protection against unfair dismissal and the right to organise and strike, and the Basic Conditions of Employment Act (BCEA), which lays down minimum working conditions for employees in the workplace also now cover domestic workers.

Also, the Employment Equity Act (EEA) protects them against unfair discrimination, while the Skills Development Act (SDA) creates a framework for improving the skills of South African workers on a sectoral basis.

### PROBLEMS AND SUGGESTIONS

The effectiveness of SD 7 however is the subject of research by the Domestic Workers' Research Project (DWRP) under the guidance of the Social Law Project (SLP) at the University of the Western Cape (UWC).

The study reveals widespread non-compliance with SD 7 among employers and ignorance of its existence and contents among domestic workers. Out of 200 employers surveyed in Gauteng, Cape Town and Durban, only 82 or 41.4% had registered their domestic employees with the Department of Labour (DoL) although 56.2% indicated that they were aware of SD 7.

There is also dissatisfaction among domestic workers with labour inspectors whom they accuse of not conducting enough site visits and siding with employers when they do.

University of Cape Town sociology

lecturer Jonathan Grossman shifts blame for weak monitoring onto the Constitution.

'The Department of Labour has many structural problems which are imposed on them and one of them is a constitutional problem. The workplace of the domestic worker can't be inspected because of the Constitution; because it is the home of the private employer and the private property of the employer is higher up in the hierarchy of rights than the rights of the domestic worker.

'I don't go for it... that we have got the best Constitution in the world and we have got the best laws: either that is wrong or I am wrong. What is best about a law which sets the wage of the domestic worker where it is set? It is condemning that person to poverty.'

Some academics argued that although the Constitution promotes human dignity, outdated traditions that place men above women hamper rapid transformation.

Labour Court Judge Halton Cheadle said responsibility for lethargic monitoring and enforcement of laws should be shared by a number of stakeholders. 'There are institutional failures. There is very little trade unionism, there may be three federations but we do know that the work on the ground is sparse. There are no collective bargaining forums. The only way in which minimum wages are set are by the Employment Standards Commission (ESC) which sits away from everyone.'

To cure these defects, Cheadle proposed the establishment of a two-tier collective bargaining mechanism that would give voice to ordinary domestic workers. He suggested local government and municipalities should assist in setting benchmarks, monitoring and enforcement of these standards. (See *SALB 34.3* for a full discussion of his interesting ideas.)

'Bring the negotiations to local level. The Employment Standards Commission must also have local

standards along with national standards and have hearings in the locality so that domestic workers and their organisations and the NGOs (non-governmental organisations) have a voice there,' he said.

Grossman suggested that the domestic worker sector should be transformed into an 'essential public service' paid for from state coffers to avoid headaches that confront policy makers every year. He suggested that government could inject funds into the sector to ensure domestic workers were paid a fair wage.

'Domestic workers are subsidising employers who need nursing care but opt for domestic workers who they pay less instead of nurses; or the state because the responsibility of care should be a responsibility of the state.'

For Sahra Rykklief of the International Federation of Workers' Education Associations (Ifwea) a tax rebate could boost wages and upgrade employment conditions for domestic workers. Awarding tax rebates to employers when they paid domestic workers more than the minimum wage could also spur employers to register workers with the UIF and provident funds.

Cheadle agrees: 'You are allowed to have entertainment expenditure deducted from your tax but not for private domestic assistance; not child care. If you have tax relief for domestic workers you will be formalising the relationship and so you hit two birds with one stone: you get enforcement and you get a monitoring capacity.'

But organisations of domestic workers must also reinvent themselves as oversight bodies and actively lobby political parties contesting local elections to drive domestic workers' rights forward. <sup>LB</sup>

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## Conference Comments: Going forward

Delegates to the Social Law Project conference convened to discuss the plight of domestic workers called for a change in the way the domestic sector is seen nationally and believed that their salvation lay in empowering them.

Because of the private nature of the sector, domestic workers are best suited to monitor employers' compliance with the law. Trade unionists and rights activists working with domestic workers should find ways of reaching out to workers, many of whom are confined on the employers' premises.

Domestic work, delegates agreed, should be viewed as a profession in order to elevate the status of workers and give them back their dignity.

There need to be more radical ways of 'naming and shaming' errant employers of domestic workers, including holding vigils outside the premises of abusive and exploitative employers.

'Whatever the Department of Labour is going to do and whatever we are researching, there should always be domestic workers standing outside employers' doors with placards saying this employer is a thief or this employer does not deserve any respect or this employer has committed a crime,' said University of Cape Town lecturer Jonathan Grossman.

Cindy Chou of the Legal Assistance Centre's Gender Advocacy and Research Project in Namibia, however, said more conventional methods such as education campaigns targeting both employers and domestic workers would produce better results. She said her organisation had found that many employers did not pay domestic workers gazetted minimum wages and leave pay, or give sick leave and maternity leave, because of ignorance of the law.

They had made simple contracts available in public spaces including government offices, supermarkets and in newspapers for employers and domestic workers to cut out. The organisation had also brokered an understanding between unions and employers' federations with a view to promoting dialogue on issues affecting domestic workers. Chou's 'advocacy on a practical level' included weekly radio and television broadcasts which focused on the domestic worker sector.

Unionists demanded that a process for wage negotiations for the sector between workers' and employers' representatives be established and called for closer cooperation between the DoL labour inspectorate and activists. Unionists could assist by identifying problem areas for blitzes.

This was echoed by Trevor Bailey, an official from DoL when he announced the formation of a Domestic Worker Forum in the Western Cape. The Forum would bring together members of unions, domestic workers, DoL officials and employers' representatives in a loose coalition to deal with problems affecting the sector.

George Mpedi of the University of Johannesburg said that unions should form partnerships with law clinics at universities to litigate matters involving domestic workers. This had been done to great effect when protecting the rights of poor people in divorce matters.

The conference was concerned about the plight of migrant domestic workers, mainly women and girls, who sometimes worked under arduous conditions for little or no pay. Undocumented migrants suffer isolation, were sometimes barred from communicating with other workers, worked extremely long hours, lack privacy and are prone to psychological and economic abuse and servitude.

Annette Lansink, Dean of Law at Venda University, said although international human rights did not grant undocumented migrants the right to work, the South African Bill of Rights and international conventions guarantee this group protection from unfair labour practices and discrimination.

She said migrants must not be seen as victims and usurpers of jobs and resources but as courageous individuals who contributed meaningfully to the economic development of the country. Some migrants' undocumented status was caused by the closure of legal routes to migration. Women were particularly vulnerable because of cultural practices that only allowed them to obtain travel documents with the consent of their husbands or fathers.

Problems associated with migration which exploded into xenophobic violence in South Africa could be overcome if African countries relaxed legal barriers to free movement of labour across borders. This idea was not well supported regionally, however, because of its perceived impact on member states' sovereignty, pressure on resources and jobs.

Darcy Du Toit, a professor of labour law at the University of the Western Cape, said migration was unstoppable in a rapidly globalising world. Instead of wasting vast sums of money trying to stop migration, governments should divert these funds towards more sensible ways of regulating the human flow.