

From the frying pan into the fire

Are domestic workers still at risk?

Their status as black women in South Africa makes domestic staff some of the most exploited workers. What has been the impact of the new legislation on their lives? **Elias Cebekhulu, Evan Mantzaris, Bulelwa Ngomane and Mduduzi Mtshali** seek to explore this by revealing the results of a survey conducted in Rooihuiskraal in Tshwane's Centurion.

After the advent of democracy in 1994, the Labour Relations Act, 66 of 1995, covered domestic workers, but it was only in 2002 that special provision was made for them to be protected by minimum wage legislation. A Cosatu submission on the rights of domestic workers in 2000 noted that, 'they are the workers most in need of strong state intervention which protects their rights. The market for domestic labour has always been the model of flexible labour market with wage rates at the discretion of individual employers, great flexibility (both upwards and downwards) in the number of days and hours

worked, task flexibility, and no barriers to discretionary firing of the workers.'

The first sectoral determination under the Basic Conditions of Employment Act – establishing minimum wages for domestic workers – came into effect on 15 August, 2002. The sectoral determination laid down conditions of employment such as hours of work, leave, particulars of employment and termination of employment. It also prescribed R861.90 as the minimum wage. The law applied to all employers and employees in the domestic worker sector across the country.

But has this Sectoral Determination improved conditions in the sector which employs an estimated 1.5 million workers? The Rooihuiskraal survey provides some of the answers. The suburb consists of 90% whites and 10% blacks. Domestic workers in the area look after babies, clean, cook and do baby sitting. Some are pieceworkers who have their own homes, while others live in. A range of people such as doctors, teachers, housewives, business people, and government and private sector employees employ them. Most are women between the ages of 30 and 41. About half have a Grade 5-7 education level, while 41.7% have a matric. Most have been domestic workers for between four and six years.

KNOWLEDGE OF AND RESPONSE TO NEW LAWS

All of the employers surveyed had heard of the new laws: 50% felt the legislation was good, 22.2% said the legislation was very unfair and that employers were not properly consulted, and 16.7% believed it did not affect them either way and they treated their employees the same as before. The majority of employers said they had discussed the new legislation with their domestics while half the employees said the new legislation was not discussed. The difference between the way employers and employees saw an issue is in

evidence throughout the survey and pinpointed a serious lack of communication.

The survey asked if employers complied with the legislation. Most said they did. Of these half answered that they had always treated their employees as part of the family so there was no need for changes. Some mentioned that they paid the school fees of their domestics' children. An estimated 33.3% said they did not understand the new legislation and 16.7% said they had changed nothing because they could always do without domestic help.

When a particular question was asked about doing without domestic help, 40% of employers said they could do without help and 33.3% did not respond to the question. On the workers' side, 71.4% indicated that they saw no changes while just over a quarter believed things had changed for the better.

Many employers complained about the Department of Labour whom they felt had not consulted them especially on wages and some indicated they had dismissed their employees. Some employers were impressed with the legislation, on the whole but complied with only parts of the Determination that they felt 'comfortable' with.

CONTRACT, WAGES AND LEAVE

The Determination stipulates that domestic workers must have a written contract of employment with the employer. But most Rooihuiskraal domestics did not have a contract, while 33.3% had signed one. In the area of wages, contradictions again emerged between the views of employers and employees. The majority of domestic workers said they were paid between R500 and R700 a month, 37.5% earned between R800 and R1 000 and 20.8% earned between R1 100 and R1 300. Most employers, on the other hand, asserted that they paid between R800 and R1 000 a month – within the range of the R861.90 minimum wage. Only 58.3% of

workers said they received annual increases. When employers did raise wages, the majority got an increase of between R20 and R50 per month while about 70% of employers unilaterally granted a wage rise whilst the rest decided on the amount by mutual agreement.

In terms of leave provisions, the survey showed a variation in the amount of paid leave that employers gave to domestics but it was clear that most had to work on public holidays. Most workers said that sick leave was not deducted from pay and that in many cases there existed a tacit obligation for employers to help when they were sick. Employers often gave medicines or money to see a doctor.

Paid leave was also a point of difference between employers and employees. Most employees said they gave annual paid leave. In reality many workers indicated that they got 1-2 weeks leave and 31.8% said they got no leave at all. Only 9.1% got near the 21 days stipulated by the determination.

HOURS OF WORK

The living arrangements of domestics directly impacted on the employment relationship. The majority of domestics were living in while only 16.7% lived off the premises. Their ready availability meant that employers often called on them to work outside of normal working hours.

For work on public holidays and overtime, such as Sunday work, the majority of domestics did not get extra pay. The majority of employers however asserted that they paid overtime and for work on public holidays.

Work hours were also a point of difference between employers and employees. The majority of domestic workers said they started working between 6am and 7am whilst most employers stated that work started between 7am and 8am. Again the majority of workers said they stopped working between 5pm and 8pm, whilst most employers said between 4am and 5pm. The majority of workers worked more than a 45-hour week. The majority of employers gave time off during the day but this varied between half an hour and one hour.

UNEMPLOYMENT INSURANCE FUND (UIF)

The UIF was extended to cover domestic



workers from April 2003. Many Rooihuiskraal employers had not registered for UIF whilst 33.3% had. Some employers with their own businesses argued that they would not contribute when they did not have such security themselves. On the question of whether employers provided a pension, half of the domestics said they did not know. Just over a quarter said they had no pension while 20.8% said their employers had provided for them.

CONCLUSION

The research provides some concrete information for policy makers. The researchers note that the combination of labour market flexibility and exploitation is noticeably evident in the case of domestic workers. Most Rooihuiskraal employers had not complied with the new regulations and it was easy for them to get away with this. Workers were clearly aware of this and adopted a 'mask of deference' as a protective disguise to shield their real feelings. They were aware of their exploitation but often did not have the information to enforce their rights. As a result they were afraid to lodge a grievance for fear of dismissal.

The researchers put forward a number of recommendations on how to upgrade the conditions of these workers:

- The holding of workshops and other educational forums for domestic workers and employers to properly come to grips with the new legislation. These forums should also provide a platform for employers' to voice their complaints and problems in order to diffuse resentments.

- Low cost or free skills training should also be provided for domestics so that they can improve their lot in life.
- The provision of facilitation for labour inspectors and union organisers to access private homes. Furthermore, prosecution of employers should only happen in serious cases of transgression in order to reduce tensions in the home.
- Minimum wages should be complemented by other strategies, such as a basic income grant and social wage so that domestics are able to support their families.

This is valuable research, but it is important to see it only as a beginning. It was conducted in a relatively affluent area thus further investigation needs to be done on the conditions of domestics and childminders who work in impoverished townships and squatter areas. Here the flexibility of the labour market would expose considerably worse conditions. Domestic work is also one of the mainstays of illegal immigrants where no rights apply and low wages and summary dismissal abound. Further work also needs to be done on how to police the sectoral determination, as insufficient resources currently exist. Further investigation also needed to evaluate the most effective way to educate employers and domestics on their rights and obligations.

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