



A Million Dollar Question: What Will it Take to Bridge the Gap Between Legal Rights and Workplace Realities?

By Amy Tekie

'Our employers are abusing us physically, emotionally and mentally but we are scared to report them because we might lose our jobs.'

'Having a written contract may help. Also, if there can be organisations that will speak for us since we are voiceless.'

(Quotes from Malawian domestic workers in South Africa, in 2021)

It may be surprising that African countries stand out (with some exceptions) for giving domestic workers basic coverage under the labour law. Many countries worldwide have failed to meet this most basic requirement, and labour law protections are the critical foundation for activating the social and legal changes that are needed to professionalise the sector. Unfortunately, legal protections are not enough. A recent study on migrant domestic workers in the SADC region showed rampant informality across countries, resulting in a dearth of labour law enforcement (ILO, 2022). It is common knowledge that domestic work is under the radar, and employers are not held accountable to the law.

Looking at several key indicators, the table below relates the degree to which domestic workers in the region have rights equal to other workers in the country (1), fewer rights than other workers (2), or no rights at all (3) (ILO, 2022: 79).

	Angola (live-in workers)	Angola (live-out workers)	Botswana	Mada gascar	Mauritius	Mozam-bique	Namibia	Seych-elles	South Africa	Tanzania	Zimbabwe
Weekly hours	1	2	2	1	2	1	1	1	1	1	1
Weekly rest	1	1	1	1	1	1	1	1	1	1	1
Annual leave	1	1	1	1	2	1	1	1	1	1	2
Minimum wage	2	2	2	1	1	3	1	1	1	1	1
In-kind payment	2	2	2	2	1	3	1	1	2	2	1
Maternity leave	1	1	1	1	2	1	1	1	1	1	1
Maternity cash benefits	1	1	1	1	2	1	1	1	1	1	1

Despite a level of basic coverage, there are still substantial gaps in the protections needed to ensure decent work. In the above chart, key areas where domestic workers have fewer rights are in-kind payment (for example, allowing payment in food instead of wages), lower minimum wages, and higher maximum working hours. The majority of SADC countries include domestic workers in at least one social protection scheme (such as maternity leave, pension, or unemployment insurance), but nearly all of these have less than 30% registration rates for the sector (ILO, 2022).

The landmark Constitutional Court judgement of 2019 enforcing inclusion of domestic workers under the South African Compensation for Occupational Injuries and Disease Act (COIDA) was hard-won by the tireless efforts of the South African Domestic & Allied Workers Union, the Union of Domestic Workers in South Africa, and the SERI-SA.¹ It is now being used as a precedent for similar legal battles in Zimbabwe and Eswatini, through the Zimbabwe Domestic and Allied Workers Union and the Swaziland Domestic Workers Union, with the support of the Solidarity Centre.

Tragically, in the 2.5 years subsequent to the Mahlangu judgement, only seven COIDA claims were made by domestic workers, in a sector of nearly one million. Although the law has required domestic employers to register their workers for COIDA since 2019, as of June 2022 only 1677 domestic workers had been registered.² This is a shocking 0.2% of workers in the industry.

COIDA is a classic example of how, even when the law encodes workplace rights, the daily realities of domestic workers often do not reflect these laws. The One Wage Campaign, an alliance of domestic and farmworker organisations in South Africa, fought for these workers to earn the full National Minimum Wage, with the support of Lawyers for Human Rights and the Solidarity Centre. This was finally granted in 2021 for farm workers and 2022 for domestic workers, but massive numbers of workers in both sectors are still earning less than the minimum wage, with no consequence to their employers.

How do we bridge the gap from policy to enforcement? There is obviously no simple answer to this question, but I would suggest that we start focusing the spotlight and the resources on the women and men who are on the ground changing things for one individual at a time: worker organisations, and advice offices.

Early on in our work at Izwi Domestic Workers Alliance, our Case Manager (a former domestic worker) regularly insisted we emphasise contracts and payslips as a top priority in advocacy work. Initially I was surprised. While paperwork plays an important role, it did not seem as noteworthy as pushing for a living wage or addressing GBV, for example. One case after another, however, it became clear that she is right. The laws forbidding sexual harassment exist, but they are nearly impossible to enforce without the domestic worker losing her job. Seemingly

mundane contracts, payslips and UIF registration may seem irrelevant on this issue, but these signal the accountability and formality which are so desperately lacking in this sector, reminding employers from day one that they do not have license to exploit workers according to their whims.

Sweeping legal changes happen only on the back of long days of case work and CCMA hearings. No one wants to fund small-scale, day-to-day labour rights case work, yet every worker who is supported to challenge her employer changes things not only for herself, but for the future employees in that home, and often in the homes of the employer's friends and family as well. The cultural change that is needed to formalise the sector will happen one contract, UIF registration, and CCMA case at a time.

The SADC region has a small but dynamic array of labour rights organisations supporting domestic workers in at least 14 out of the region's 16 countries. These range from federated unions to member-run worker associations, from migrant worker networks to advice offices and grassroots non-profits. Only a small fraction of domestic workers in the region are individually represented by these institutions, but their advocacy work stretches much further. If we are hoping to see any changes in the actual realities of domestic workers, these are the most critical role players.

Some of their work is highlighted below:³

The Migrant Workers Network of Lesotho is a network of Basotho migrants, many of whom are domestic workers in South African homes. The MWN identifies traffickers and uses its extensive WhatsApp networks to warn women, spotlight illegal recruiters, and engage the Lesotho government to eliminate trafficking.

In Tanzania, WoteSawa supports child domestic workers, returning them to their homes and to school, monitoring child abuse, and providing psychosocial support for victims of trafficking and labour exploitation.

The Federation of Free Trade Unions of Zambia and the Zambia Federation of Employers have partnered

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with government ministries to create a Code of Conduct for Employers of Domestic Workers.

The Domestic Workers Association of Zimbabwe has worked with the ILO and the Zimbabwean government to create certification standards and related skills trainings for domestic work, increasing workers' credentials and providing opportunities for growth in the sector.

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To accommodate these challenges, and the changing world of work, a variety of organisational options are needed. Trade unions benefit from being part of a federated movement which has a voice in government. Membership associations have fewer political connotations, more flexible leadership structures, and allow for a wider scope of activities. Less formal social media-based networks have massive reach, fluid membership, and extremely low running costs. Only a diversity of institutions can accommodate the diverse contexts and needs of workers themselves.

Legal advocacy is critical, but alone it will not change the realities of workers. Let's engage artists and the media to help the public re-examine their individual roles in perpetuating the culture of servitude. Let's create stronger links between academics and civil society organisations, to more impactfully share knowledge and resources. Let's formalise a network of domestic worker organisations in the region, to build solidarity and magnify advocacy efforts. Until we find a million dollars to spend on labour rights enforcement, let's aim for one million signed contracts. We may find the long-term impact is equally powerful.

Notes

1. Mahlangu and Another v Minister of Labour and Others (CCT306/19) [2020] ZACC 24; 2021 (1) BCLR 1 (CC); [2021] 2 BLLR 123 (CC); (2021) 42 ILJ 269 (CC); 2021 (2) SA 54 (CC) (19 November 2020)
2. Letter from the Department of Employment and Labour to SERI-SA, 'Re: COIDA Claims Submitted by Domestic Employees Post Mahlangu Judgment', 13 June 2022.
3. For more information on the work of various domestic worker organisations in the region, see 'Voices of Domestic Worker Organisations' at www.izwi.org.za.

References

International Labour Organisation. (2022). 'Migrant Domestic Workers in the SADC Region: Intersecting Decent Work with Safe, Orderly, and Regular Migration.' *ILO*, pp. 75–103.