



Domestic Workers in South Africa:

Inclusion Under the Compensation for Occupational Injuries and Diseases Act

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Abstract

After decades of deliberate exclusion from labour laws and social protection in South Africa, domestic workers have slowly been able to taste the fruits of years of laborious fights for recognition, inclusion, and dignity. On 19 November 2020, the Constitutional Court ordered the inclusion of domestic workers in the Compensation for Occupational Injuries and Diseases Act (COIDA). This marked another victory for domestic workers. Textual inclusion is a relatively easier feat compared to the real challenge of implementation to give effect to such inclusion. The monitoring of implementation and progress of domestic workers who have benefitted

from this inclusion has been relatively under-explored. This study explores the progress made in the development of social protection following the recent inclusion of domestic workers in COIDA, together with the implementation of this law. The article uses desktop research to investigate barriers to the development and implementation of social protection in the domestic work sector. The article highlights the importance of multi-stakeholder collaboration, clear policies from the Department of Labour, and the provision of constructive support for employers in the domestic work sector to facilitate compliance with COIDA.

Introduction

Globally, there are 75.6 million domestic workers, representing between 1 to 2% of employment of the workforce everywhere (Bonnet, Carre and Vanek, 2022). In South Africa, although domestic work has declined because of the pandemic, there are 797,000 domestic workers in the country (Stats SA, 2023). Furthermore, 94% of these workers are women and 11% of all working women in South Africa work in the domestic work sector (Stats SA, 2023). The context and regulation of this sector, therefore, have broader implications for gender equality in the country.

Domestic work in South Africa has progressed from the colonial vestige of servitude to gaining recognition as a form of employment. The regulatory framework has dramatically changed since 1994, granting domestic workers the same rights as all other workers. These include inclusion into the protective cover of primary labour statutes; the introduction of the 2002 Sectoral Determination 7 (SD 7), which prescribes basic working conditions for domestic workers; the National Minimum Wage Act 9 of 2018 covering the payment of a minimum wage to all workers including domestic workers; and more recently, the extension of the scope of Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) by the Constitutional Court to domestic workers.

The inclusion of domestic workers into the scope of COIDA is a significant development. However, for workers who have been historically undervalued and marginalised, enforcement and compliance with the judgement of the Constitutional Court is imperative. This chapter investigates the extent to which these rights have translated into reality and what measures are being taken to ensure employers in the domestic work sector comply with the court's judgement. Furthermore, drawing on desktop research, this article explores various barriers to compliance. It argues that while acknowledging the need for legal recognition of domestic work, the state does not go far enough in respect of the implementation and enforcement of legal protection of domestic workers.

Domestic work in South Africa: Context and regulation

A domestic worker can be broadly defined as a person who performs domestic work in the home and includes a gardener, driver or person who cares for children, the aged, sick, frail or disabled (BCEA, 2002). The socioeconomic significance and demand for paid domestic work have grown significantly. However, for many workers, participation in the domestic work sector is circumstance-driven with most of these workers being from disadvantaged backgrounds.

The majority of domestic workers in South Africa are black women who are also disproportionately impacted by the racial and structural legacies of domestic work in South Africa (Ally, 2008). This gender distribution is important when considering the socio-economic implications and impact of domestic work. Women who participate in domestic work are usually the breadwinners in their households and contribute to the reduction of poverty and unemployment in their respective communities (Calitz, 2021). Domestic workers play a pivotal role in gender equality in the ways they liberate other women from household and care labour so that they can participate in alternative economic activity (Budlender, 2011). The economic contribution of domestic workers therefore must be measured by the ways in which they relieve household labour from others, particularly women, so their own participation in other sectors of the economy is made

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possible (COSATU, 2012). This facilitates the operation of the labour market and contributes to economic growth in South Africa (Budlender, 2011).

As previously mentioned, there are several legal instruments which regulate the South African domestic work sector. Domestic workers are protected in terms of section 23(1) of the Constitution which affords 'everyone' the right to fair labour practices. This provision applies to all employers as well as all workers. The Labour Relations Act (LRA) and the Basic Conditions of Employment Act (BCEA) were enacted to give effect to the rights contained in section 23. The LRA grants domestic workers the same rights and protections as other employees in South Africa in respect of freedom of association, collective bargaining, strikes, dispute resolution, and unfair dismissal. The BCEA regulates minimum working conditions for all employees including domestic workers. Domestic workers are broadly covered under the Employment Equity Act (EEA) which protects them from discrimination.

Domestic workers were not protected by any special legislation until 2002 when the Minister of Labour promulgated Sectoral Determination 7: Domestic Workers Sector (SD7) to supplement the BCEA. SD7 regulates the minimum standards of employment for domestic workers, making South Africa one of only a few countries where the unique conditions of the domestic sector have been acknowledged in the law. The SD7, read with the BCEA, complies with most of the basic conditions of employment required by ILO Convention 189 for domestic workers (COSATU, 2012). Within this context, SD7 expressly regulates employment-related issues including wages, written particulars of employment, ordinary hours of work, night work, standby, meal intervals, rest period, payment for work on Sunday, public holidays, annual leave, sick leave, and family responsibility leave. For live-in domestic workers, section 8 of the Determination restricts deductions of not more than 10% of the wage for a room or other accommodation supplied by the employer, as long as the accommodation is weatherproof; in good condition has at least one window and door, which can be locked; and has a toilet and bath or shower, if the domestic worker does not have access to any other bathroom. Live-in domestic workers are also entitled to at least one month's notice to vacate any premises. Furthermore,

the Determination grants domestic workers at least four months of maternity leave (BCEA, 2002), prohibits the employment of a child under 15 years in this sector and requires employers to register domestic workers who have worked for more than 24 hours per month with the Unemployment Insurance Fund (UIF) (BCEA, 2002).

The National Minimum Wage Act which came into force in January 2018 aims to provide for the advancement of economic development and social justice through among others, improving the wages of lowest-paid workers such as domestic workers and farm workers. This law set the national minimum wage at R20 and introduced a tiered phase-in with respect to the wages of domestic workers. Consequently, at the time of proclamation in the government gazette, domestic workers were entitled to a minimum wage of R15 per hour, R5 less than the national minimum wage. Domestic workers' remuneration is often low as a result of the work being undervalued on the one hand and low levels of bargaining power on the other hand (ILO, 2016). It is encouraging, however, that in March 2022, domestic workers' wages were increased by 21.5% and equalised with other workers as promised in the National Wage Act in 2019 (Niyagah, 2022). As of 21 February 2023, the national minimum wage was equalised for domestic workers, with all other workers and set at R25,42 for every ordinary hour worked (Republic of South Africa, 2023).

Similarly, with effect from 1 April 2003, domestic workers were included under the Unemployment Insurance Act 63 of 2001 (UIA), which regulates the payment of, amongst others, unemployment, and maternity benefits to qualifying contributors (Du Toit & Huysamen, 2013). Domestic workers working for an employer for more than 24 hours a month have been covered by the Unemployment Insurance Act 78 since 2002, while those working less than 24 hours a month continue to be excluded. Workers have to be registered by their employers who have to complete the necessary forms and submit them through the online uFiling system or manual means.

Notwithstanding the conscious 'inclusion' of domestic workers, labour law is generally designed to fit the 'standard' employment model. Domestic work is typically 'non-standard' (part-time, temporary, informal) and most of South Africa's labour statutes

do not fit the conditions of domestic work nor give domestic workers adequate protection in practice (Social Law Project, 2013). Because domestic workers are in a structurally weak position, the enforcement of legislation in the home raises particular challenges and reliance on legislative measures alone is unlikely to significantly improve the working conditions of these workers. The questions of regulation and organisation are therefore interrelated and without effective organisation there will be little prospect of effective regulation (COSATU, 2012). For example, twenty-one years on, reliable statistics on the extent of UIF registration of domestic workers remain a problem. In 2015, GroundUp reported that only 50% of domestic workers in the Western Cape are registered for UIF and hardly any unemployed domestic workers received UI benefits. A major reason for this was the impossibility of registering domestic workers either online or by telephone. Yet, the UIF surplus at the time stood at R72.3 billion in reserves.

In 2019, it was reported that one-third of domestic workers in South Africa entitled to unemployment insurance benefits were unregistered (Liao, 2019). The impact of the non-compliance was aggravated and more visible during the Covid-19 pandemic (GroundUp, 2020). Related to the UIA is the COIDA which aims to protect employees from income shocks as a result of incapacity and inability to work either temporarily or permanently. Until recently, the scope of application of the COIDA was determined by the following definition:

(xviii) “employee” means a person who has entered into or works under a contract of service or of apprenticeship or leadership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind, but does not include ... (v) a domestic employee employed as such in a private household.

Through this definition, domestic workers were explicitly and deliberately excluded from COIDA. It had been consistently argued that the exclusion of domestic workers from the scope of COIDA was unjustifiable in terms of the Constitution as well as Convention 189 (Allsop, 2020). In 2010, the advisory committee of the SA Law Reform Commission, noting

the exclusion of domestic workers from COIDA, observed that there were ‘public policy reasons’ for this but that ‘a review of the exclusion may be warranted’ (South African Law Reform Commission, 2023). In response to a submission by Social Law Project and others in November 2010, urging the inclusion of domestic workers in line with Convention 189, the SALRC in October 2011 recommended a review of the exclusion of domestic workers from the application of COIDA by NEDLAC (SALRC, 2011).

ILO Convention 189 recognises that:

‘Domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and of work, and to other abuses of human rights.’

‘In developing countries with historically scarce opportunities for formal employment, domestic workers constitute a significant proportion of the national workforce and remain among the most marginalized.’

South Africa is celebrated for having one of the most advanced constitutions in the world and a system of labour law comparable to those of developed countries, yet at the same time conditions of paternalism rooted in the colonial past continue to characterise the domestic employment sector. Paternalism may be abusive or benevolent but inevitably involves a relationship of dependency. Rights-based regulation, on the other hand, recognises the fundamental inequality between the employer and worker and seeks to create a legal framework within which the worker can make her/his services available to the employer without becoming his subordinate. Paternalism and rights-based regulation are two modes of governing work relations that are opposed to one another in almost every way, yet paternalistic traditions and the struggle for the achievement or the enforcement of basic rights co-exist in many countries, including South Africa (COSATU, 2012).

The number of domestic workers employed in South Africa was severely impacted by the Covid-19 pandemic. A quarter of the workforce had become

unemployed as a result of the first lockdown (Stats SA, 2020). While there has been some recovery, there has not been a return to pre-Covid employment levels in the sector. It is argued that the continued loss of domestic worker jobs in South Africa is reflective of the strain households are under as a result of financial pressure (BusinessTech, 2022).

Domestic workers face greater challenges than workers in most other sectors. For example, their job security is directly linked to that of individual employers, who are themselves subject to market forces, such that if the employer is retrenched or suffers a downturn in business, the domestic worker may be the first 'luxury' to be dispensed with. The greatest cause of their vulnerability, however, is their isolation in private households (COSATU, 2012). One worker per worksite being a private home, makes organising in the traditional shop floor way extremely difficult. Collective bargaining in the domestic work sector is therefore limited. The struggle for the inclusion of domestic workers under COIDA has been decades long. It took a landmark legal case to push it over the finish line.

Law Reform: Inclusion of domestic workers in COIDA

In the last two decades, the transformative contents of the Constitution, and increased mobilisation by domestic workers' organisations alongside supportive non-governmental organisations have facilitated the extension of key legal protections to domestic workers in South Africa. One of which is the extension of the scope of COIDA to domestic workers in the Constitutional Court case of *Mahlangu v. Minister of Labour* (CCT306/19) [2020] ZACC 24. The COIDA is part of South Africa's social security system.

This case was brought by the dependent (first applicant) of a deceased domestic worker. The deceased worked as a domestic worker in a private household for 22 years. On the 31st March 2012, the domestic worker drowned in her employer's pool while executing her duties. Subsequently, the dependent of the deceased domestic worker approached the Department of Labour to enquire about compensation for her death (SERI, 2023). The dependent was informed that she could neither get compensation under COIDA nor unemployment insurance benefits for her loss which

should ideally be covered by COIDA. Supported by the South African Domestic Service and Allied Workers Union (SADSAWU), an application was brought before the Gauteng Division of the High Court for section 1(xix)(v) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) to be declared unconstitutional, to the extent that it excludes domestic workers employed in private households from the definition of 'employee'.

According to the applicants, the exclusion of domestic workers from the scope of COIDA is a violation of their right not to be unfairly discriminated against on the basis of race, sex and/or gender and social origin in terms of section 9(3) of the Constitution. They further argued that the provision differentiates between domestic workers employed in private households and other employees covered by COIDA. Indeed, this exclusion was argued to contravene the purpose of COIDA which is to provide social insurance to employees who are injured, contract diseases or die in the course of their employment; thereby violating their right to social security under section 27(1)(c) of the Constitution. Finally, the applicants argued that this exclusion also infringes on their right to dignity under section 10 of the Constitution.

Interestingly, the respondents, in this case, agreed that section 1(xix)(v) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA) is unconstitutional. However, they argued that the application before the court was unnecessary as the Ministry of Labour was in the process of amending COIDA to include domestic workers. Yet, there have been delays in amending the law despite a previous announcement by the Minister of Labour in 2014 that the COIDA would be amended to include domestic workers (Kubjana, 2016). This can be attributed to the lack of political will on the part of the government.

In terms of ILO's Domestic Workers Convention 189 which has been ratified by South Africa, article 13 prescribes the right to a healthy and safe working environment for domestic workers. Within the South African context, the right to a safe and healthy work environment is regulated by the Occupational Health and Safety Act (OHSA) 85 of 1993. This Act is applicable to all workplaces and requires every employer to provide and maintain as far as is reasonably practicable, a working environment that is safe and

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without risk to the health of the employees (Section 8 of the OHSA). Furthermore, domestic workers are employees within the definition of section 1(1) of the OHSA. Consequently, employers of domestic workers have a statutory duty to take reasonable precautions to prevent or reduce accidents or deaths in the workplace. However, not every work-related accident, injury or death can be prevented; hence, the need for a statutory compensation scheme for occupational injuries and diseases.

Statutory compensation is payable in terms of COIDA to employees or dependents of deceased employees for injuries, diseases or death arising out of, or in the course of, employment. However, as previously mentioned, section 1 of COIDA excludes domestic workers employed in private households. Therefore, domestic workers have no claim against the compensation fund. Although these workers can alternatively sue for damages under common law, the vulnerability and low income of domestic workers means that these employees might not be able to afford the costs of litigation. Furthermore, to claim damages, domestic workers would need to prove negligence on the part of the employer and this does not guarantee that the employer would be in a financial position to pay any compensation awarded.

In deciding that the exclusion of domestic workers from claiming compensation under the COIDA was unconstitutional, the Constitutional Court relied on sections 9, 10 and 27(1)(c) of the Constitution and South Africa's obligation under regional and

international law. The court noted that in 2016, the ICECR Committee had requested that domestic workers be included under the Compensation Act. Furthermore, the Constitutional Court acknowledged that an interpretation of the COIDA which is a component of the fundamental right to social security must be based on the interdependence of human rights to advance gender equality and just and favourable conditions of work for vulnerable groups. It is widely acknowledged that a deviation from the interdependence of human rights leads to disparity and injustice for vulnerable workers (Mahlangu judgement at para 86). The Court examined this right to social security as being interdependent with the rights to equality and dignity.

In interpreting the right to equality of domestic workers, the court's interpretation was based on the intersectionality theory. This theory recognises that different identity categories can overlap and co-exist in the same individual creating a qualitatively unique experience when compared to another individual (Mahlangu judgement at para 86). According to the court, domestic workers in South Africa suffer multiple oppressions based on race, gender, social status and class (Mahlangu judgement at paras 86–105). These aggravate the vulnerability of domestic workers, leading to further marginalisation. Consequently, the exclusion of these workers and their dependents from accessing the benefits of the COIDA limits their right to equality and the right not to be discriminated against unfairly.

Human dignity must be assured for there to be decent work. Decent work cannot be enjoyed if workers do not enjoy adequate labour and social security protection. The Constitutional Court found that the exclusion of domestic workers from the definition of 'employee' in the COIDA violates their human dignity. According to the court, '[T]he exclusion demonstrates the fact that not only is domestic work undervalued, it is also not considered to be *real work* of the kind performed by workers that do fall within the definition of the impugned section of COIDA' (Mahlangu judgement at para 108). This has facilitated the commodification and objectification of domestic work. The court held this to be contrary to the Constitution's commitment to human dignity which prohibits the notion that people can be reduced to objects (Mahlangu judgement at para 113).

In conclusion, the Constitutional Court held that this confirmation applies retrospectively from 27th April 1994 to provide relief to other domestic workers who were injured or died at work prior to the granting of the court's order. While remarkable, the retrospective application of this order raises the issue of implementation and enforcement. Implementation and enforcement matters, without this the law is a dead letter.

Implementation of COIDA

Undoubtedly, the extension of labour and social security rights to domestic workers has been largely overlooked and when it came to pass, it was long overdue. As noted above, the domestic work sector has been (and continues to be) undervalued, and as a result until recently, excluded from the COIDA. Following the Constitutional Court's decision in the *Mahlangu v. Minister of Labour's* case, it is imperative to assess the degree to which the inclusion in COIDA has become a reality for domestic workers. This section explores the measures taken by the Department of Employment and Labour (DoEL) to ensure compliance with the Constitutional Court's judgement. This will be done by examining the:

- Progress in the uptake of registration of domestic workers by their employers with the Compensation Fund post-*Mahlangu*.
- Progress in the number of claims submitted to the Fund by domestic workers (or their employers) and successfully paid out including retrospective claims.

The DoEL, as part of the executive branch responsible for the implementation of labour laws and regulations, has tried to take steps to help create an enabling environment to realise domestic workers' inclusion under COIDA. Prior to the Constitutional Court's decision in the *Mahlangu* case, the Minister of Employment and Labour had started the process of tabling amendments to COIDA in Parliament (Compensation for Occupational Injuries and Diseases Amendment Bill, 2020), to include domestic workers working in private households amongst other amendments. However, not much had been achieved prior to *Mahlangu* in realising domestic work forming part and parcel of real (paid) work

(*Mahlangu* judgement at para 25). The *Mahlangu* judgement fast-tracked such inclusion and extended the degree of retrospective application for claims of accidents dating back to 27 April 1994 that can be brought to the Compensation Fund. The process of amendments to COIDA continued post-*Mahlangu* during 2021 with the expected signing into law of the amendment to take place in December 2022. This has seemed to come to fruition as the bill has been signed by the President according to the President's spokesperson, however, it is yet to be published in the government gazette (Bhuta, 2023). This does not mean that domestic workers cannot enjoy the inclusion provided with immediate effect by the Constitutional Court. The inclusion through the amendment bill (now Act) is merely to provide a further formalisation of the domestic work sector (COID Amendment Bill, 2020).

Additionally, the DoEL responded to the Constitutional Court's judgement by creating awareness of the importance of the inclusion of domestic workers in the COIDA. The Compensation Commissioner's first point of call was to communicate this significant milestone in social security afforded to domestic workers in a notice published in the government gazette on 10 March 2021 (COIDA regulations in GN 106 GG 44250 of 10 March 2021). The notice aimed to bring awareness to the immediate and retrospective application of the inclusion of domestic workers and encouraged domestic employers to register their domestic workers. The notice set out the process for registration and the parameters for claiming compensation from the Compensation Fund. The notice, however, did not provide more constructive procedural information for assistance to domestic employers to enable them to effectively and efficiently register their domestic worker(s). No clear guidelines were provided to domestic employers who are not familiar with the documents needed to complete registration of themselves as an employer and their domestic worker with the Compensation Fund. A brief generic overview of required documents by employers when registering their domestic worker(s) is provided in the notice. However, no explanatory note nor guidelines are provided in the notice. This could potentially have been an important feature, given that many employers have submitted complaints in

undertaking the registration process, noting a lack of assistance or support by the Fund to make the process easier.

Similarly, the Constitutional Court's judgement provided that the inclusion of domestic workers would apply retrospectively. In the notice gazetted, the general prescription period of one year to submit claims to the Fund could be implied to include retrospective claims. However, after submissions were made regarding this restrictive timeline and the lack of transitional arrangements to address retrospective claims and the way in which retrospective claims are to be dealt with, the notice was withdrawn. A three-year prescription period is provided for in the COIDA amendment bill and transitional arrangements for retrospective claims are to be brought to the Fund (Ss 24 & 63(1) COID Amendment Bill, 2021). The increase to three years to report a workplace accident applies to both retrospective and new claims (once the amendment comes into operation).

Despite the changes in the legal framework, communication of the new information including the amended timeline has not been communicated to workers (or employers) for retrospective claims. This can further be evidenced by the low numbers of domestic workers whose claims have been processed post-*Mahlangu*. Based on a dialogue session that took place in 2021 aptly titled 'Two Years after Mahlangu', less than 10 domestic worker claims had allegedly been processed (Gilili, 2022). Further, it remains unclear how many *retrospective* claims have been submitted to the Fund. Information in this regard is not readily available to the public by the Compensation Fund, and where it is, information seems contradictory.

Moreover, information regarding the transitional arrangements for retrospective claims of domestic workers which is provided for in the amendment bill is not comprehensive. Though the submission has transitional arrangements to cater for retrospective claims in the amendment that have been successful, the transitional arrangements lack clarity. Clarity in regard to whether the same process for 'normal' claims is to be followed, which may be implied as the transitional arrangements, do not provide a different process for retrospective claims or different documents to be submitted where for example a domestic worker no longer works for the employer

where she/he incurred a workplace injury. This could potentially be addressed in a guideline document by the DoEL, however, it is hard to say whether this will be provided, given the current lack of efforts by the DoEL in providing clarity and information sharing when it comes to COIDA.

Moreover, for a domestic worker to benefit from inclusion in COIDA, the baseline is registration. COIDA provides much prescriptive compliance information for employers, including registration. According to section 80 of COIDA, employers (now including domestic workers' employers) are to register their (domestic) worker(s) with the Fund. Having regard to this provision, there are two broad issues that could (or do) potentially hamper the reality of this provision for domestic workers. First, the responsibility rests on the employer to register the worker. Noting the power imbalance still present in this employment relationship, it could be difficult for a domestic worker to encourage (much less demand) their employer to register them for fear of losing their job, amongst other reasons.

Additionally, the enforcement of (and compliance with) labour and social security law in private households remains a challenge (Olasoji, 2022). Compliance by domestic employers remains a challenge, either due to a lack of knowledge of new developments in the sector and/or a lack of interest in complying. This is further exacerbated by the lack of adequate measures (or political will) taken by the DoEL to ensure compliance with labour laws. A case in point would be the UIF Covid-19 Temporary Employer/Employee Relief Scheme (TERS), which many domestic workers initially could not benefit from. This was due to TERS being linked to an employee being registered with UIF, and many domestic employers did not register their domestic workers for UIF. This, however, was remedied when subsequent regulations allowed domestic workers who were not registered for UIF to claim from TERS (News24, 2020). After nearly 10 years of being included by virtue of the law, the practical manifestation of such inclusion was minimal at best.

Secondly, the registration and claims processes are burdensome and further exacerbated by the inefficiencies of the online system (Compensation Fund 'Annual Performance Plan 2021/22', 2020). Existing employers who have registered their

workers with the Fund have noted the struggle in navigating the CompEasy system during registration. Further, the process of claiming compensation is another challenge faced by employers who submit claims for their workers. Together with this, the Compensation Fund has been known to have late or no payments to medical practitioners and workers (COID Amendment Bill: Public Hearings Day 4, 2021). This status quo presents a further implementation challenge that could potentially (and will most likely) be experienced by domestic workers. Domestic workers are vulnerable and, together with existing (and persisting) challenges in the sector, the reality of practical implementation for the majority of domestic workers in South Africa to benefit from COIDA may be a longshot.

Moreover, failure by an employer to register their employee(s) with the Compensation Fund is considered an offence. However, the enforcement of this provision has not gained much traction, particularly in the domestic work sector as many domestic workers are still without written contracts (Visser, 2022). Despite the gentle encouragement by the Compensation Commissioner to employers to register their domestic workers with COIDA or face a penalty for non-registration, the Compensation Fund has shied away from taking actions like providing a cut-off time for registration of domestic workers or issuing the penalty for non-registration.

Much like UIF, the coverage of domestic workers under COIDA is entirely dependent on the registration of the worker by the employer with the Compensation Fund (Malherbe, 2013). However, data on registration is unclear and inconsistent. According to the Director-General of the DoEL, in a presentation made to the parliamentary monitoring committee in June 2021, only 6,461 employers were registered on the CompEasy system. However, the Compensation Fund had previously stated that they had nearly 450,000 registered employers. This means that the number of employers registered in the CompEasy system is only about 1.5% of registered employers in the Compensation Fund (COID Amendment Bill: DEL Response with Submissions, 2021). The implication is that the government continues to provide inaccurate statistical information on progress that is being made, when in reality that is not the case. Moreover, the DoEL continues to have a lack of political will to

enforce penalties for non-compliance or compliance with labour laws.

In addition, the sectors of registered employers are unclear. For example, there has been an increase in the employment of domestic workers (Stats SA, 2022). It can, therefore, be argued that there should be an increase in the number of registrations with the Fund. However, this argument is hard to substantiate as statistical information in this regard is not readily available to the public or easily accessible from the DoEL.

Access to information is an important feature of the domestic work sector. As previously mentioned, one of the first responses of the DoEL was to raise awareness on the inclusion of domestic workers in the COIDA. Besides the use of official government publications, additional channels were used by the DoEL to bring awareness to inclusion. These channels included a few billboards at airports and a few visits to domestic work training sessions. For example, in 2022, UN Women and Women in Informal Employment: Globalising and Organising (WIEGO) organised a provincial advocacy workshop centred around raising awareness of COIDA and UIF, with 25 domestic workers in attendance from the South African Domestic Services and Allied Workers Union (SADSAWU) and the United Domestic Workers Organisation of South Africa (UDWOSA) with two government representatives providing

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workers with a deeper understanding of how UIF & COIDA works (Social Law Project, 2022). Given the manner in which social media platforms usage have increased over the years, official government publication and much more the digital literacy level of domestic workers are sub-par at best. Although the Fund tries to bring awareness of COIDA using radio talks, national campaigns to bring about awareness of COIDA and domestic worker inclusion have not been as frequent since the *Mahlangu* judgement (Compensation Fund 'Preliminary Report' National Treasury, 2020). Most awareness-raising campaigns have been done by domestic worker organisations/ trade unions and supporting organisations. However, according to the DoEL's most recent annual report, 754 campaigns were conducted during 2021/22. Despite these alleged efforts and campaigns, less than 10 domestic workers, out of over 800,000 domestic workers in South Africa, have benefitted from the practical implementation of inclusion (Two years after the *Mahlangu* Dialogue Session, 2021). From a worker's side, it gets communicated a bit more regularly through trade union campaigns, domestic work support organisations and institutions, but not so much to the domestic employer. Therefore, this calls for a government agency that assures that the minimum compensation standards are respected. This process begins with ensuring the mandatory registration of domestic workers.

The progress in the number of domestic worker claims that have been submitted to the Fund, is difficult to ascertain, aside from the previous allegation of no more than 10 claims being processed. Moreover, there are some additional barriers to compliance with COIDA. Some of these are briefly discussed below:

- **Administrative malfunction:** There have been errors in notices with incorrect codes— including those for domestic employers, which are necessary to navigate when using the CompEasy system (COIDA regulations, 2021). This can be a barrier to compliance as incorrect information, administrative backlogs, and system errors in website links tend to discourage employers who are willing to comply from undergoing the registration. Furthermore, in research conducted in May 2020, August 2020 and February 2021, injured workers expressed their frustration with the CompEasy system, which hampered access

to compensation (COIDA Amendment Bill: Public Hearing Day 3, 2021). These challenges, which are mainly administrative, made it difficult for these workers to navigate the system. According to this research, 78% of participants were unable to submit claims and only 21% of those who submitted claims were compensated (COIDA Amendment Bill: Public Hearing Day 3, 2021). This is further evidence of the challenges being experienced by domestic workers and which could further be a barrier to the implementation of the COIDA.

- **Challenges in the Fund's (and its employees') administrative capacity:** The Fund (through its employees and ICT systems) has been struggling to fulfil its obligations in terms of COIDA in its administration of funds for compensation for workplace injuries (Compensation Fund 'Annual Performance Plan' 2021/22, 2020). The Department is in the process of restructuring the compensation fund, while simultaneously looking at making the fund more effective (COIDA Amendment Bill: Department Briefing with Deputy Minister, 2021).

These barriers hamper compliance and impact negatively on domestic workers who are to benefit from COIDA.

Conclusion

The implementation of the COIDA in the domestic work sector may remain limited as a result of the inherent challenges such as the perception of domestic work, the lack of effective enforcement mechanisms by the DoEL, the challenges within the Compensation Fund including the CompEasy system, despite a plan to address these. With the existing difficulties of monitoring compliance by individual employers with legislation plaguing the sector (Malherbe, 2013), it is hard to imagine a smooth shift in compliance, despite the efforts of increasing the number of labour inspectors. The real issue is ensuring that domestic workers are able to indulge in the fruit of their labour by using appropriate mechanisms that would ensure this is done effectively. This must include measures to ensure employers and domestic workers are aware of its provisions and that employers are held accountable for compliance with it (COSATU

Media Statement, 2022). Although social protection has been extended to domestic workers, by way of the law, implementation remains a challenge.

The COIDA amendment bill needs to be published extensively using traditional media and digital media outlets such as social media. A campaign to bring awareness of the inclusion of domestic workers in the COIDA needs to be strategically placed and visible for employers (as well as domestic workers). Moreover, translating relevant materials into different languages could potentially assist in bringing information across to domestic workers. Cooperation with domestic worker trade unions, employers' organisations, and organisations sympathetic to the causes need to be seriously considered and rolled out by DoEL, as opposed to mere information sessions.

The government ought to look at mechanisms and develop strategies that provide easier access to information for domestic workers and employers. Moreover, it needs to ensure that there is improved efficiency and accessibility to social protection mechanisms such as UIF and now COIDA as well for the domestic work sector. Moreover, given the spatial context (i.e. a person's home) in which domestic workers work, enforcement and compliance with regulation are challenging. The sector currently continues to be marred by informal employment arrangements and it will take a long while for employers to jump on board with compliance with COIDA. The role that the DoEL, therefore, plays in realising that the letter of the law becomes a reality for domestic workers and domestic employers, is of paramount importance.

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