

COSATU Submission on Domestic Workers Sector
Presented to the Department of Labour
7 September 1999

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1. Summary of Recommendations

- COSATU fully supports the setting and enforcement of minimum wages for domestic workers. The minimum should be a living wage, informed by the social and economic needs of domestic workers and their responsibilities in providing for their families.
- Once the minimum is set, there should be graduated real increases over an agreed period.
- COSATU supports a system of graded minimums for domestic work.
- This should be linked to a comprehensive education and training strategy for domestic workers.
- The Basic Conditions of Employment Act should apply uniformly to domestic workers. In addition, the Employment Conditions Commission should regulate further issues specific to domestic workers.
- Education, monitoring and enforcement with respect to these workers' labour rights should be drastically improved.
- COSATU supports the establishment of state supervised pension/provident funds for domestic workers.
- Where the introduction of minimum wages impacts on the affordability of domestic work, the adjustment should be made in terms of reducing the number of hours worked.
- Domestic workers should have full access to both the UIF and COIDA.
- The Department of Labour should look into steps needed to establish a state regulated agency through which domestic workers would be employed.
- COSATU supports the ultimate establishment of a centralised collective bargaining system for the domestic sector and proposes that the Department of Labour should take active steps towards this end.

2. Introduction

Domestic workers are in isolated, individualised employment relationships, subjected to highly unequal power relations. As such they are amongst the workers most in need of strong state intervention which protect their rights and which goes some way towards equalising the power relationship. The market for domestic labour has always been the very model of a so-called “flexible labour market” – wage rates at the discretion of individual employers, limited worker organisation, great flexibility (both upwards and downwards) in the number of days and hours worked, task flexibility, and no barriers to discretionary firing of workers.

Of the estimated 700 000 domestic workers, 88% are estimated to be African and 96% women.¹ It has been estimated that 35% of African women and 23% of Coloured women are employed as domestic workers.² Transformation of this sector is thus directed at the poorest and most oppressed segment of the labour market.

It is in this context that COSATU welcomes the call for public comment by the Department of Labour on minimum wages and conditions for domestic workers. The typically apartheid-style power relations in domestic workplaces have made it difficult for them to comprehensively improve their own wages and conditions. While there have been significant advances in legislation, the *status quo* on the ground remains largely intact. This problem has been recognised *inter alia* in the ANC’s Election Manifesto and in the Five Year Programme of the Department of Labour.

We are optimistic that this call for public comment will be the start of a process of consultation which will lead to a concrete improvement in the lives of domestic workers, in line with the process for a sectoral determination set out in chapter 8 of the Basic Conditions of Employment Act (BCEA). We also suggest that in the process of investigation of a sectoral determination, reference be made to determinations in other relevant sectors such as cleaning and catering.

In compiling this submission one problem which we noted is the lack of recent and reliable statistics and other research dealing with domestic workers. This is perhaps indicative of the general marginalisation of this sector. We recommend that the Department of Labour liaises with Statistics South Africa to improve the available database for this sector.

Our submission will respond to the issues raised in the Call for Public Comment, as well as putting our recommendations in a broader context of transforming this sector. We are also submitting proposals on farm workers to the parallel investigation.

3. Minimum wages

3.1 Background

Domestic workers are amongst the worst paid workers in South Africa. The following figures give some idea of their wage levels:

- In 1993 Limbrick estimated an overall median wage of R386 per month, of which 40% was represented by payment in kind³.
- The CCMA, based on their cases, reports an average wage of R369 per month with the lowest wage they have encountered being R150 and the highest R2 000.
- The 1995 October Household Survey Data, excluding non wage benefits, reveals monthly wages from as little as R50 and an average wage (for full time and part time domestic workers) of R549.⁴ Looking at the spread of wages, just over half of domestic workers earned R400 or less per month.

¹ These figures calculated by Haroon Borat

² J. Grossman (1997) “Organising domestic workers: the challenge and some proposals.”

³ J. Limbrick 1993 “Extending the provisions of the Workman’s Compensation Act and the Unemployment Insurance Act to domestic workers.”

⁴ This includes one anomalous case of R3 090. Excluding this case would push the mean down to R486.

The bottom 10% of domestic workers earned an average of R70 per month, while the top 10% earned an average of R1 648⁵. Looking at the bottom and top quintile, the average earnings were R123 and R1 159⁶ per month respectively.

- There have also been reports of an existing average of about R375 per week in the richer areas⁷.
- Wages also vary significantly between provinces. The highest is the Western Cape with an average of R659, followed by Gauteng with R542. The lowest wage paid is in the Northern Cape with an average of R171⁸.

It is important to note that these abysmally low wages are not due to a lack of productivity on the part of domestic workers, but are rather a function of their low economic power. There is essentially a “buyer’s market” for domestic labour. Employers are able to determine who they employ, for how long, at what wages and conditions, and at what point the domestic worker should be dismissed, with the domestic employee having negligible bargaining power. The existing lack of any minimum wage legislation allows these earnings, as does the ideologically motivated perception that higher wages means lower employment.

3.2 Recommendation

COSATU firmly supports the setting and enforcing of a basic floor of minimum wages for domestic workers. Such a policy would ensure that all domestic workers would be assured of a living wage rather than being part of the “working poor” as is currently the case. We will not be proposing a specific figure at this stage of the investigation. The starting point for the setting of such a wage should be the needs of a domestic worker to support her/his family and provide for their material and social needs. Minimum wages for domestic workers should be comparable to those within the cleaning sector.

In terms of the actual minimums, by way of reference the South African Domestic Workers Union recommended the following wage structure for domestic workers⁹:

- Skilled domestic worker should earn a minimum of R1 200 per month plus transport costs.
- Semi-skilled domestic workers should earn a minimum of R800 per month plus transport costs.
- Part-time domestic workers should earn R75 per day or R9.72 per hour plus transport costs.¹⁰

“In kind” payments, often including accommodation and/or food, currently comprise a portion of the wages of many domestic workers. These payments are of varying utility to domestics. Nevertheless, minimum wage regulations would have to take account of in-kind payments while avoiding situations where employers use such payments to avoid paying the required minimums. If the Employment Conditions Commission (ECC) is to provide for remuneration in kind, we recommend that the conditions under which this is allowed are closely circumscribed.

In-kind payments could only be accepted in lieu of money wages by mutual consent of the employer and employee, and furthermore a ceiling would have to be set on the proportion of wages which can be received in-kind. We suggest a ceiling in the region of 25%, so that if for example the minimum wage is R1 600 the minimum money wage is R1 200. Furthermore, the ECC should look at how to regulate in-kind payments to avoid the abuse of their positions of power. This should include stipulating what goods what constitute acceptable in-kind payments and how to set a monetary value to these goods.

⁵ This figure drops to R 1 290 when the above mentioned case is excluded.

⁶ This figure drops to R 971 when the above mentioned case is excluded

⁷ J. Grossman 1997 “Organising domestic workers: the challenge and some proposals.”

⁸ The above statistics are calculated using the 1995 October Household Survey.

⁹ These figures are dated by several years and would have to be inflation-adjusted if they were to be used as any kind of benchmark.

¹⁰ It should be noted that these are historical figures and they would have to be inflation-adjusted were they to serve as a current guide.

We propose that once the minimum is set, there should be graduated real increases over an agreed period. The aim of this is to raise the living standards of domestics by providing for real annual increases in minimum wages. After a period to be agreed upon, there should be a **review** of stipulated minimums based on an evaluation of a range of factors.

4. Differential minimums and education and training.

The call for public comment also raises the issue of differential minimums for different categories of domestic workers. We see this issue as being integrally linked to an education and training strategy for domestic workers.

4.1 Background

Education attainment is particularly low amongst domestic workers. Almost 10% of domestic workers have no education. Just over 12% have a Standard 5. Slightly less than 70% have a standard 6 or less. This problem is compounded by the difficulty in getting access to education and training opportunities as many domestic workers live on the employers premises and have limited time off.

4.2 Recommendation

COSATU supports a system of **graded minimums for domestic work** as applies in other industries. In principle, the different levels should be based not on tasks performed, but rather on **skills**. At present, however, there are difficulties in quantifying skills of workers and this is particularly the case in a sector such as domestic work. We thus suggest the **definition of more than one category of domestic worker, based primarily on what the principal responsibility of the worker is**. This would obviously have to be done in a way which is practical and appropriate for the sector. A living wage should inform the lowest of these minimums, with other minimums being set over and above this.

There is a generic problem of a lack of accreditation of non-formally acquired skills, which is partly being addressed through the National Qualifications Framework. This problem is exacerbated in the domestic industry, both due to the traditional devaluing of household labour and due to the fact that most domestic workers have not had formal training. The South African Qualifications Authority should develop a system towards **recognising and accrediting skills** acquired by domestic workers. The establishment of a **cleaning SETA** (to which the Department of Labour has committed itself), the payment of a **skills levy** by employers, **paid time off for education and training**, and the provision of **adult basic education and training** for domestics would also be crucial aspects of an education and skills development strategy for domestic workers. Local authorities could form a structure through which adult basic education as well as a cleaning SETA could be run.

Despite existing differences in rates of pay between different geographic and socio-economic areas, COSATU in principle opposes the perpetuation of regionally differentiated minimums. However, there may need to be a transition period over which uniformity is established. This should be guided by the principle of reducing regional inequality.

5. Conditions of employment

5.1 Background

Domestic workers tend to work long and irregular hours and are often required to be on "stand by". Approximately 18% of full time domestic workers work more than a 45 hour working week. Almost 9% of full time domestic workers work 56 or more hours per week.¹¹ Furthermore, employers often do not pay any overtime.

Domestic workers are subjected to many forms of abuse and humiliation including isolated living conditions and sexual harassment.

¹¹ Statistics South Africa, 1995 October Household Survey.

Job security is particularly low. The dismissal of domestic workers and severance pay make up some 70 to 80% of the complaints that come to the Department of Labour, and a similar if not higher proportion of cases that come to advice offices¹².

5.2 Recommendation

The BCEA should apply uniformly to domestic workers, except if and where – by mutual agreement of stakeholders – there are sector-specific or sub-sector specific characteristics which make the implementation of the BCEA impracticable.

Standards currently applicable to domestic workers are generally not adhered to. This situation needs to be improved through a combination of **making domestic workers more aware of their rights** so that every domestic worker becomes a monitor; **union organisation**, and an **improved system of government inspections and enforcement**. More **resources** from the Department of Labour should be allocated to this. Legislative or other changes may be required to facilitate the **access of labour inspectors and union organisers to workplaces**, even where these are private homes. Treating domestic workers differently to other workers subordinates the rights of workers to those of property owners.

We recommend a **collaborative programme** between the Department of Labour and local governments to carry out education and publicity on the rights of domestic workers. Furthermore, the Department should conduct a **study** focusing on the harmonisation between different institutions (existing and envisaged) which will be involved in the regulation and financial management of the domestic sector; as well as the institutionalisation of **collective bargaining** in the sector.

The ECC should also make provision on other issues specific to domestic workers, including but not limited to the following:

- regulating the conditions under which deductions from a workers pay can be made.¹³
- reasonable meal intervals and rest periods
- adequate remuneration for night work, provided that this work is done by mutual consent of the employer and employee
- where a uniform is to be worn by the domestic worker, this should be provided by the employer at his/her own cost
- where a domestic worker resides on the premises of the employer, housing and sanitation should be of a suitable standard and there should be reasonable provision for the domestic worker to have a socially integrated lifestyle¹⁴.

Our recommendations on the regulation of dismissals are dealt with under section 6.1 on employment.

6. Pension and Provident funds

At present, in the vast majority of cases domestic workers who have put in decades of service either retire or are dismissed as they age, with no retirement provisions other than inadequate public pensions. The failure of private employers to provide for their domestic workers' retirement amounts to a cross-subsidisation of these employers by the rest of society. **COSATU thus supports the establishment of pension/provident funds for domestic workers.** There would be a need for **state supervision** of these funds. Contributions from both employers and employees should be mandatory, and the added expense of these contributions to workers also needs to be taken into account in the setting of their minimum wage levels.

¹² R. Rees (1997) "If the union is not there, nothing is caring for the domestic workers."

¹³ Section 7 of BCEA Sectoral Determination 1: Contract Cleaning Sector can be referred to in this regard.

¹⁴ For example it would be unreasonable for the employer to prohibit the domestic worker from receiving any visitors.

The effective running of such funds would need to be part of a comprehensive system of registering domestic workers and regulating the sector as a whole. State regulation of a **medical aid scheme** for domestic workers should also be investigated.

7. Further issues

7.1 Employment

One of the main arguments mustered against minimum wages is that they are projected to lead to job losses. It is difficult to accurately project the likely effects of minimum wages, and it is also difficult to distinguish realistic responses to wages increases from what are effectively employer threats to dismiss workers rather than to pay them a decent wage. These threats are part of a broader ideological offensive against labour market transformation.

Even if minimum wages were to lead to some job losses, however, this is not necessarily an argument against their implementation. There is a general consensus that the wage elasticity of demand lies between 0 and -1, meaning that a particular increase in aggregate wage levels (say 10%) would be associated with a fall in employment levels, but of a lesser magnitude (say 7%) (other factors held constant). A wage increase would thus increase the total resources going to workers, even if there are some job losses. Given the fact that the employed – including the working poor – are effectively a social security net for the unemployed and for each other, increased wages would certainly reduce overall inequality and redistribute income more equitably.

Middle class white households generally set aside about 2 - 2.5% of their income for domestic labour, while the equivalent figure for the lowest income group across population groups is about 0.24%. The equivalent cost of replacing domestic workers with other services (contract cleaners, childcare, laundries etc.) would be considerably higher, especially for middle and upper income groups.

There may well be employers of domestic workers who would genuinely be unable to afford a full time domestic were they to pay living wages. **This does not mean that minimum wages should lead to such a worker losing their job: the adjustment should rather be in terms of the number of hours worked.** So if the minimum wage is R1 500 per month and an employer can afford a maximum of R900 per month, they are only able to afford a domestic worker for a 3 day week. This would free up more time for the domestic worker to take other part time jobs or to pursue other activities.

Similarly, there are many poor or middle income families who require domestic assistance with childcare or other tasks, but who are unable to afford an adequately remunerated domestic worker. The solution here is not to allow domestic wages to fall so low that anyone who needs domestic assistance can afford it. The solution lies rather in more publicly provided facilities and social wages with respect to childcare and other necessary services.

Where retrenchments of domestic workers are unavoidable, these should be undertaken in line with the **Labour Relations Act** (including the Code of Good practice: Dismissals), which domestic workers are already covered by although without proper enforcement. This stipulates the need for consultation with affected employees or their representatives in the case of dismissals based on operational requirements, that the employer and employee must attempt to reach consensus on various issues associate with a dismissal, the need for extensive information disclosure by the employer, and other procedural issues. Compliance with these and other relevant provisions should be enforced in the domestic sector. Furthermore, we reiterate our proposal for the amendment of Section 189 of the Labour Relations Act, which would make dismissals based on operational requirements an issue for negotiation rather than consultation, and which would assist in stemming job losses in the economy as a whole.

7.2 Access to UIF and COIDA

Domestic workers face assault and sexual harassment from their employers, as well as other work-place injuries including dog bites and injuries related to the use of electrical gadgetry.

These remain uncovered by the COIDA and access to sick leave may be difficult, and often unpaid. They are also uncovered by the UIF, and thus have no unemployment, sick or maternity benefits.

COSATU proposes that domestic workers should be brought under the ambits of both the **UIF and COIDA**, enjoying all the benefits and with employers and employees making the requisite contributions. We acknowledge the work already done by the Department of Labour task team on options for extending UIF to domestic workers.

During the passing of the COIDA Amendments in 1997 the Portfolio Committee on Labour recommended that the Department investigate a number of issues¹⁵. In our submission to the Department on the Five Year Programme earlier this year, we supported these recommendations. We request a **progress report** on implementation.

7.3 Regulation of a labour pool/agency

While a minimum wage and improved conditions of service would address some of the problems faced by domestic workers, they would remain isolated, and subject to an (albeit regulated) individualised employer-employee relationship. An option which COSATU would support for addressing this more broadly would be a **state-regulated labour pool/agency for domestic workers**. This would entail all domestic workers registering with such an agency, and employers would only be able to hire domestic workers through this agency. The agency would play an important role in ensuring that minimum wages and working conditions are adhered to by all employers. More organised and open hiring procedures through a central agency would improve the efficient matching of employers' and employees' needs and skills. Furthermore, bringing together all domestic workers in a common pool would facilitate unionisation and a collective consciousness of their rights. COSATU recommends that the **Department of Labour looks into steps which would be needed to establish a domestic workers' agency**.¹⁶

¹⁵ These were as follows:

- Pensions to black employees who, prior to June 1997, were excluded from the provisions of the then Workmen's Compensation Act;
- Compensation for low wage earners who, because compensation is based on a percentage of earning, receive less compensation in respect of the same injury or disease as higher paid workers, and are further discriminated against because compensation is not based on the loss of a workers earning capacity but on a percentage assessment of the injury;
- Inclusion of domestic workers under COIDA bearing in mind that this matter has been under investigation since at least 1992;
- Guaranteed inflation-linked pension increase so that, when using his/her discretion to increase monthly earnings payable in terms of section 49 and 54 of the existing COIDA, the Commissioner will ensure that the increase is at least equal to the inflation rate as measured by the Consumer Price Index (CPI) of the preceding year;
- Consultation with the Board when making appointments to Regional Medical Advisory Panels;
- The principle of extending COIDA to cover sexual harassment and the practical ways which this can be achieved;
- A review of the Merit Rebate system to take into account the fact that the system acts also as a disincentive to report injuries and diseases and that some or all of the money funding the system could be used to finance other improvements the Committee has recommended above; and
- A review of the entire compensation with the possibility of incorporating the Mutual Associations into a consolidated structure. Any lifting of the restrictions placed on the Mutual Associations by section 84(1)(b) of the current Act should be part of this review.

¹⁶ Such an agency would by no means take the place of a domestic workers' trade union or of existing advice offices, but these different forms of organisation, intervention and regulation would actually complement each other.

Ultimately, COSATU supports a shift towards **collective bargaining** concluded at a domestic workers' bargaining council. This would be better facilitated where there is already a centralised domestic workers' agency. The concluding of a collective agreement would obviously replace the sectoral determination for those employers and employees covered by the agreement. Given the problems and imbalances within the sector, we recommend that the Department of Labour investigates what steps can be taken to promote collective bargaining within the domestic sector.

8. Conclusions

The success of a minimum wage policy in empowering workers and lifting them out of poverty is contingent on its effective implementation. Minimum wages and conditions of employment should be well publicised amongst both employers and employees, and thereafter uniformly enforced with punitive measures against employers who violate them. Minimum wages and employment conditions, once set, should not be subject to downward variation. As proposed earlier in this submission, more resources should be directed towards the monitoring of wages and conditions, and access of inspectors and unionists to workplaces should be guaranteed. There should also be effective complaints procedures and offices which are accessible – in terms of hours, location, and language – to domestic workers.

One of the biggest challenges in implementing minimum wages and working conditions will be dealing with situations where domestic workers are aware that they are being exploited but are afraid to take up a grievance for fear of reprisal and particularly dismissal. This challenge should be taken into account in policy formulation and implementation to ensure that workers protected against possible employer backlashes.

COSATU also proposes that the sectoral determination be applicable to full-time, part-time, and casual domestic workers. Not only would this ensure that all domestic workers are protected, it would also avoid setting up disincentives for the further casualisation of the sector.

While minimum wages and working conditions alone will not solve the problem of poverty amongst domestic workers, they are one important aspect of transforming this segment of the labour market. Effectively implemented minimum wages would ensure a living wage to the most exploited workers and well as going some way towards addressing the power imbalance between domestic and farm workers and their employers. However, minimum wages and conditions of employment need to be complemented by other strategies targeted at the working poor and the unemployed. Key amongst these are the basic income grant and the social wage. COSATU submitted a proposal on the basic income grant at the Job Summit, which argued for a universal grant which would then be recovered and subsidised at higher income levels. We welcome the initiatives currently being considered by the Department of Welfare and Population Development in this regard. A basic income grant would be an important supplement to minimum wages set as well as relieving (even if to a minimal extent) some of the burden on domestic workers to support family members.

The third prong of an integrated approach would be an enhanced social wage. Like other workers as well as the unemployed, domestic workers face high costs such as transport. Increasing social investment and alleviating costs including, health, and education would also relieve some of the financial pressure on workers as well as improving productivity. To raise the social wage without enforced minimum wages, however, would amount to a cross-subsidisation of domestic employers by the rest of society. The combination of minimum wages, a basic income grant, and an improved social wage would make a significant difference in reducing poverty and improving living conditions and productivity.

Just as the LRA, BCEA, Employment Equity Act and Skills Development Act were blamed for job losses – in some cases even before the legislation was passed let alone implemented – so the threat of job losses will be used to argue against minimum wages and other forms of regulation for these segments of the labour market.

This is an ideological offensive with no basis in fact and which seeks to block our socio-economic transformation. The flexibility of the South African labour market has been well documented, and nowhere is this combination of flexibility and exploitation more evident than in domestic and farm work. We need to make a choice between allowing employers to retain the status quo and transforming the labour market to ensure a better life for all workers. We urge the Department to pursue the latter objective.

The process initiated by the Department of Labour and the ECC is a welcome step in extending transformation to all workers and workplaces. COSATU looks forward to participating at future stages of the investigation, policy formulation implementation, and monitoring processes.