

Domestic Workers Discussion Document



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- **African Diaspora Women Workers Network(ADWWN)**
- **International Labour Organisation (ILO)**
- **South African Domestic Services and Allied Workers Union(SADSAWU)**

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Introduction

The 5th Cosatu Congress resolved that a research be commissioned by the CEC and conducted by Naledi on the need for establishment of advice centres for servicing and assisting domestic workers. Again, part of the resolution indicated that we should consider finding a viable home for domestic workers. As we move towards the 11th Cosatu Gender Conference, we need to reflect and take stock of the previous resolutions passed on domestic workers, assess the strategies/ steps taken for implementation and make a way forward.

This paper has arisen as a follow-up of the afore-mentioned resolution including the commitment made by Cosatu on the Summit held between 27-28 August 2011 which the federation hosted in partnership with the South African Domestic Services and Allied Workers Union (SADSAWU) and the South African Office of the ILO. The aim is to stimulate and resuscitate discussions on domestic work acknowledging the positive steps taken at international level of adoption of ILO Convention 189 (C189) on Decent Work for Domestic Workers and its Recommendation 201 (R201).

Context

Domestic work is one of the oldest and most important occupations for millions of women around the world. In contemporary society, care at home is vital for the economy outside the household to function. In the past two decades demand for care work has been on the rise everywhere. Today domestic workers make up a large portion of the workforce, especially in developing countries, and their numbers have been increasing even in the industrialised world.

Domestic work typically entails the otherwise unpaid labour traditionally performed in the household, by women. This explains why domestic work is undervalued in monetary terms and is often informal and undocumented. It tends to be perceived as something other than regular employment.

Worldwide a growing proportion of women have entered the labour market and these women workers need help with household tasks, with their children and in some cases with their elderly parents as well. To cope with their increased workload, they have employed others, mainly women, to help them with these domestic tasks.

As a result domestic work done on a paid basis is on the rise. In Europe it is one of the fastest growing economic sectors. Worldwide, the number of domestic workers are now estimated to be about 53 million, however due to the fact that this work is often hidden or unregistered, the total number of domestic workers are estimated to be as high as 100 million.

In developing countries they make up at least 4 to 12% of wage employment. Domestic work is still gendered: it is estimated that about 83% of domestic workers are women or girls (and many are migrant workers).

In about 40% of the world's countries domestic workers are excluded from even the most basic labour laws.¹ According to the International Labour Organisation (ILO) a substantial proportion of them do not enjoy the same protection commonly enjoyed by other categories of wage workers. Despite being particularly vulnerable to unduly low wages and long working hours, approximately 42.5% are not entitled to a minimum wage under national law. More than half, 56.6% have no statutory limitation of their normal weekly hours of work and 44.8% are not entitled to weekly rest periods. More than one third, 35.9% have no maternity leave under national law and a larger proportion, 39.6% do not have maternity cash benefits.

Domestic work is undervalued and poorly regulated and many domestic workers remain overworked, underpaid and unprotected. Accounts of maltreatment and abuse, especially of live-in and migrant domestic workers are regularly denounced in the media. In many countries domestic work is very largely performed by child labourers.

Given that the workplace of domestic workers is somebody else's home, it has for a long time remained an unregulated island of employment. In many countries domestic workers are not considered as employees, even if they do this to earn a living.

Because domestic workers are in a structurally weak position, and because enforcement of legislation in the home raises particular challenges, reliance on legislative measures alone is unlikely to significantly improve the working conditions of domestic workers. The questions of regulation and organisation are therefore interrelated and without effective organisation there will be little prospect of effective regulation.

Most domestic workers employed in South African homes are African women from disadvantaged backgrounds. Many are internal migrants or (im)migrants from neighbouring countries. Most are unaware of their legal rights, having had limited access to formal education, and are not organised in trade unions.

The greatest cause of their vulnerability, however, is their isolation in private households. In the absence of an effective regulatory system or effective organisation (not organisation in a formal sense, but as a means of enabling active enjoyment of the basic rights which the Constitution guarantees), a benevolent employer may well seem to be the only hope for secure and decent working conditions.

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 the most advanced 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, whereas rights based regulation, on the other hand, recognises the fundamental equality of the employer and worker and seeks to create a legal framework within which the worker can make her 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.

The transformation of domestic employment, like every other meaningful form of social change must be intensely participatory. Not only the “outcome”, but also the “process” of getting there will need to involve all role-players, namely: government, trade unions, employers and workers in order to create a new paradigm of domestic employment that will become a lived reality.

It will require major interventions to address the inequality and marginalisation of domestic workers through a process of transforming social institutions, patterns of behaviour and the consciousness of the employers as well as workers in such a way that the values of the Constitution become embedded in everyday life.

The “outcome” and the “process” are understood as corresponding to the content of the fundamental rights entrenched in the Constitution.

The “overall outcome” is to enable domestic workers, like others, to lead lives of freedom, equality and dignity as contemplated by the Constitution, but the “outcome” is by no means predetermined, it is not simply a matter of transposing the regime created by existing employment statutes to the domestic sector.

The “process” consists of the various forms of legal and practical interventions, including organisation, by which this outcome is pursued. The transformation and empowerment as a result of this process would be human, social, cultural, political, and economic.

LEGAL FRAMEWORK FOR DOMESTIC WORKERS

1.1. International

International Labour Convention 189 and Recommendation 201, for Domestic Workers

The Convention adopted by the ILO in June 2011 will commit member states that ratify it to promote and realise freedom of association, the elimination of forced labour and discrimination, and the abolition of child labour in the domestic work sector. The Convention requires **ratifying Member States to take specific measures to ensure basic conditions of employment in the sector**. Further, the Convention places importance on consultations with worker organisations in ensuring implementation.

Amongst other things they will have to ensure that domestic workers are informed about their terms and conditions of employment; that they receive effective protection against harassment, abuse and violence; and that their working hours, rest periods and entitlements to various types of leave are not less favourable than those enjoyed by other workers in the specific country; and that work on standby is regulated.

Strictly speaking, Art. 11 require that members have minimum wage machinery to include domestic workers under the minimum wage coverage. In other words, if countries do not set minimum wages at all, there is an obligation to introduce a minimum wage for domestic workers.

The ILO Convention of Private Employment Agencies defines private employment agencies as follows: “any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

(a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which arise there from;

(b) services consisting of employing workers with a view to making them available to a third party, who may be a legal or natural person which assigns their tasks and supervises the execution of these tasks;

(c) other services relating to job-seeking, determined by the competent authority after consulting the most representative employers and workers organisations, such as the provision of information, that do not set out to match specific offers of and application for employment.

The proposed text for the Convention required member states to:

- Establish the respective legal liability of the household and the agency
- Establish criteria for the registration and qualifications of employment agencies, including disclosure of information on any relevant past violations.
- Carry out regular inspections of employment agencies to ensure compliance with relevant laws and regulations, and provide for significant penalties for violations
- Ensure that fees charged by employment agencies are not deducted from the remuneration of domestic workers.
- Provide accessible compliant mechanisms for domestic workers to notify authorities of abusive practices

Instead of the requirement to establish legal liability, the wording of the final Domestic Workers Convention 2011 has been adjusted somewhat and calls for “laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic workers”. It also provides for penalties including prohibition of those private employment agencies that engage in fraudulent practises.

The requirements for the registration and qualification of employment agencies have been dropped from the final Convention, although this is generally addressed in Article 15 (1)(a).

Instead of the explicit requirement to carry out regular inspections of employment agencies in the proposed Convention, the final Convention states that Members shall “ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to the domestic workers”. In addition, C.181, which refers to labour inspection, remains relevant and applicable.

A very relevant stipulation in the South African context is in the recommendation concerning “additional measures to ensure the effective protection of migrant domestic workers’ rights, such as...providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available compliant mechanisms and legal remedies, and to provide other pertinent information”.

No such public outreach currently exists. Given the influx of migrants, their increased vulnerability as a result of their legal status, and the levels of xenophobia in South Africa, such an outreach service could not only benefit external migrants, but also internal migrants.

The mother tongue of internal migrants is usually not English; they have low literacy levels and are often ill-informed about their rights. However it would probably be argued that it would be unrealistic for the state to provide such services to domestic workers alone and also that it is the function of the domestic worker organisations to provide such services.

1.2. National Laws

a. The Labour Relations Act of 1995 (LRA)

This Act provides, amongst other things, for certain organizational rights which a representative trade union may exercise and creates mechanisms for collective bargaining between trade unions and employers or employers organisations.

The LRA applies to domestic workers, and domestic workers have therefore, in theory at least, had a mechanism whereby they have been able to organise themselves and to bargain collectively on their behalf. They have also been able to refer disputes arising in terms of the LRA, including unfair dismissal and other matters, as provided in the LRA.

b. The Basic Condition of Employment Act of 1997 (BCEA)

This Act acknowledges that all workers are not able to organise themselves, and in the absence of some form of compulsion to bargain, the scope of collective bargaining is quite limited. It is for this reason that it sets basic conditions of employment that are applicable to all employees, creating so-called floors of rights and also empowers the Minister of Labour to introduce sectoral determinations.

c. Sectoral Determination 7: Domestic Worker Sector, 2002

SD7 regulates the minimum working conditions of domestic workers and defines a domestic worker as “any domestic worker or independent contractor who performs domestic work in a private household and who receives, or is entitled to receive, pay” and includes:

- Gardener
- Person employed by a household as a driver of a motor vehicle
- Person who takes care of children, the aged, the sick, the frail or the disabled
- Domestic worker employed or supplied by employment services

The very broad scope of this definition needs to be emphasised. Firstly, it seeks to include those who are engaged as independent contractors as well as employees.

South Africa's SD7 already makes provision for private employment agencies by regulating that the employment service and the client are jointly and severally liable if the employment service does not comply with the determination or any provision of the Basic Condition of Employment Act (BCEA). SD7 does not mention either labour brokering or temporary employment services. However, workers employed or supplied by “employment services” are covered by SD7, which is defined as follows:

“Employment service means any person, who recruits, procures or provides domestic workers for clients in return for payment, regardless of which party pays the domestic worker;

SD7 further states that:

“A domestic worker whose services have been provided by an employment service is employed by that employment service for the purposes of this determination if the employment service pays the domestic worker”.

The situation where workers are paid by the employment service is presumably intended to refer to labour brokering. In this situation, SD7 states that “an employment service contemplated in sub-clause (1) and the client are jointly and severally liable if the employment service, in respect of a domestic worker who provides services to that client, does not comply with the determination or any provision of the BCEA”.

Many of the basic conditions of work stipulated in the BCEA have been replicated in SD7, including written particulars of employment, ordinary working hours, payment for work on Sundays and public holidays and notice of termination of employment.

SD7 differs from the BCEA in certain respects, such as overtime work, night work, standby and family responsibility leave. Regarding overtime work, SD7 allows for up to 15 hours overtime per week whereas the BCEA only allows for 10 hours. SD7 contains more generous provisions for family responsibility leave: it grants 5 days paid leave in comparison the BCEA's 3 days.

With regard to live-in domestic workers, SD7 contains the stipulation that night work will only be allowed if there is written agreement for such work. It also provides that domestic workers may only be on standby five times a month and must be paid at least a standby allowance of R20 per shift.

It also regulates the accommodation of domestic workers by stipulating minimum conditions that have to be met before deductions can be made for accommodation. In the event of termination of employment it requires that the accommodation must be provided to the worker until the notice period applicable has expired.

Although a large proportion of domestic workers are employed on a part time basis, SD7 does not regulate part-time work very effectively. Although it caters for part-time work by specifying an hourly minimum wage that is higher for workers working less than 27 hours per week, it does not make clear how annual leave and sick leave is to be taken.

It merely states that annual leave can, by agreement, be calculated on the basis of either one day of annual leave on full pay for every 17 days worked or one hour of annual leave for every 17 hours worked. Sick leave can be calculated of one day sick leave for every 6 days worked. Part-time workers lose out on family responsibility leave, because only those who work four days a week for the same employer are entitled to family responsibility leave.

Arrangements for “the principle of confidentiality of personal data and the privacy of domestic workers” are not covered by SD7 and it could be argued that SD7 should explicitly regulate this matter.

In South African legislation the only system of registration of employment services currently in force is in terms of the Skills Development Act, which is applicable to all employment services, including labour brokers (or temporary employment services).

There is no mechanism or institutional capacity created in terms of this legislation for recording or monitoring the past conduct of such agencies. New legislation in this regard has been mooted, in the form of an Employment Services Bill circulated for public comment in 2010. The provision that “fees charged by employment agencies are not deducted from the remuneration of domestic workers” is a matter the draft Employment Services Bill envisages dealing with.

The most significant provision of SD7 is the minimum wages it lays down for domestic workers.

SD7 does not regulate payment in kind, other than the requirement that payment in kind should be stated in the written particulars of employment. It is silent on the maximum percentage of the minimum wage that payment in kind could constitute. However, Section 8 of SD7 mentions a 10% limit for deductions for accommodation.

The guidelines on written particulars of employment accompanying SD7 states that: “The total remuneration is the total of the money received by the employee and the payment in kind, which may not be more than 10% of the wage for accommodation”.

South Africa's SD7, read with the BCEA, complies with most of the basic conditions of employment required by ILO Convention 189 for domestic workers.

In a number of areas, however, South Africa's labour laws may fall short of the standards required by Convention 189 read with Recommendation 201. These include:

- Article 3 (promotion and protection of rights)
- Article 5 (fair terms and decent working conditions)
- Article 7 (migrant workers)
- Article 9 (living arrangements and personal document)
- Article 12(2) (payment in kind, mentioned above)
- Article 15 (courts, tribunals, dispute resolution)
- Article 17(1) and (2)(a) (employment agencies, mentioned above),
and
- Article 17(2)(c) (complaints mechanisms).

The most glaring shortcoming is the exclusion of domestic workers from the protection of the Compensation for Occupational Injuries and Diseases Act of 1993 (COIDA). Nonetheless, States would need to take whichever measures appropriate to ensure occupational safety and health at work for domestic workers. Special mention must also be made of the inadequacy of an enforcement system based almost entirely on the mechanism of labour inspection to bring about compliance which, for reasons discussed below, is wholly inappropriate in the domestic worker sector.

At the same time (and this is another area of potential non-compliance with Convention 189) effective implementation of domestic workers' right to freedom of association is not promoted by the framework of the LRA, which is based entirely on the circumstances of the formal economy. Yet effective organisation of domestic workers will be essential in the empowerment of domestic workers to address the above (and other) shortcomings in the legal system.

2. ORGANISING FOR EMPOWERMENT

2.1 Organisational Context

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, as happened frequently during the recent economic downturn, 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.

This paper considers an essential task to be that of ensuring domestic workers, together with all other members of society, are able to fully enjoy the fundamental rights extended to all people in South Africa, by the Constitution and associated labour laws including the BCEA, LRA and SD7. To address the root causes of equality and marginalisation of domestic workers, would require a process of transforming social institutions, patterns of behaviour and the consciousness of employers as well as workers.

Domestic workers, would themselves need to be their own change agents and for them to take charge of their own destiny, would need to be aware of their rights and have the confidence to defend those rights. Empowerment of domestic workers is thus considered as the process of developing that confidence and awareness.

The difficulties in organising and sustaining organisations of domestic workers at local level, amongst others, are isolated workplaces, lack of time off, lack of freedom and fear of employers or authorities, especially for live-in and migrant workers, mean that the usual organising strategies are often ineffective. This includes an inability to collect dues on a regular basis – important for sustainability.

Individual organisations are generally small, making it difficult to achieve scale and the necessary power to have significant impact. The increased support shown by trade unions, NGOs and even governments, could help facilitate the growth of domestic worker organisation, provided an empowerment rather than a paternalistic approach is adopted. By empowerment we mean an approach where domestic workers represent and speak for themselves through their elected leaders with support rather than leadership of other organisations.

We can identify two types of organisations of and/or for domestic workers, representing different ends of a spectrum of organisational models:

- Member based organisations (MBOs) which are democratic and representative with dues-paying members who elect representative leaders. These would traditionally be trade unions whose primary strategies are solidarity and political mobilisation, representation and collective negotiations/bargaining (broadly interpreted).
- Non-governmental Organisations (non-profit organisation) that support domestic workers whose primary objectives include social welfare, provision of services and policy advocacy for and/or with domestic workers.

2.2.Challenges: Organising and Bargaining

There are a number of special difficulties in organising domestic workers, regardless of the country in which they work. Unlike workplaces where a number of workers are associated together, the domestic worker usually works in isolation from other workers in the private home of her or his employer. The workplace is thus the private home.

Organisational rights are usually conceived of as rights exercised in the workplace. However given the isolation of domestic workers in their workplace, it would seem that organisational rights enjoyed by other workers, such as the right to hold meetings or to elect trade union representatives, are simply not applicable.

The right of access, whether by labour inspectors or trade union organisers, would be difficult to enforce in a private home. An added complication is the very intimate relationship that often exists between domestic workers and their employers.

Certainly, greater personal and emotional factors are likely to play a part within the domestic labour relationship than in a typical industrial or service context, especially where such workers work full-time and live on the premises. Intervention by an outside party may disrupt a carefully-negotiated and delicately-balanced relationship, with no prospect of ongoing intervention by the Department of Labour or trade union to enforce compliance on a daily basis. In practice, domestic workers in the workplace are largely on their own.

Domestic workers also have reason to fear victimisation if they join a trade union. Paterson & Gardener (2010:3) point out that the risk of employer retaliation is high among these workers given that they are vulnerable on so many fronts. So while domestic workers do enjoy organisational rights in some countries, the question is whether they are able to exercise these rights.

It needs to be asked at the outset whether collective bargaining is a feasible project at all in the case of domestic workers. A distinction needs to be drawn between workers employed by individual employers and those employed by agencies in the formal economy on a collective basis.

The situation of the latter begins to resemble that of other workers in the formal economy, though they only represent a small minority of all workers in the sector. For that reason this document will concentrate on the situation of workers who are individually and often informally employed, who comprise the mass of domestic workers.

Although collective bargaining can take place at different levels, the collective strength that workers are able to exercise in the workplace has historically been the foundation on which bargaining takes place. However, the domestic worker is isolated from other workers and in practice the only form of bargaining is on a one-on-one basis. This is precisely the inherent power imbalance in favour of the employer that collective bargaining is intended to address.

What makes this imbalance extreme in the case of domestic work is that since domestic work previously was, and still is, mainly conducted by women of the household on an unpaid basis it is often not perceived as "real" work. Many employers believe that if push comes to shove, they can perform the work themselves.

In the South African context (as well as in other countries where labour is abundant), however, the employer does not even have to resort to doing the work him/herself, as there is always a ready pool of workers to replace the domestic worker who is dismissed. Also, many employers have difficulty in conceiving of their home as a workplace. As a result, domestic workers are not only viewed as inherently replaceable, but struggle to be recognised as employees with rights. As a result of these and other factors, their structural power is weak.

If collective bargaining is feasible at all, it needs to take place at a level other than the workplace. The preferred level of collective bargaining in terms of the LRA is the sector. However there is no mechanism whereby trade unions

can compel bargaining at this level. It would be necessary to have an organisation representing employers as well as a trade union for collective bargaining to take place at this level.

It has been argued that employers of domestic workers are not able to take on the administrative burden of being an employer, keeping record of sick and annual leave and paying social security and paying social security contributions on behalf of employees (Ally, 2010:148; Bonner, 2010:5, Paterson & Gardner,2001: 2,15). They are even less likely to assume the responsibility of forming an employers' association. In the absence of concerted pressure from workers or government, it would need to be made clear in practice why it would be in their interests to do so.

Given the peculiar nature of the sector, it is therefore clear that conventional models of collective bargaining are unlikely to succeed at this level. It is precisely in recognition of this problem that SD7 was promulgated in 2002 though, as indicated below, this form of regulation is problematic because – at least in its present form – it does not allow for any real engagement by domestic workers in determining their own conditions of employment.

It therefore is necessary to explore forms of collective engagement that would be more appropriate to the realities of this sector. As a starting point, it is instructive to look at the experience gained with the organisation of domestic workers thus far.

2.3.Organised Domestic Workers: The case of SADSAWU

Despite their inherent vulnerability and obstacles to organising, South African domestic workers have a long history of organising. They have however mainly tried to use the traditional trade union model of organising.

The South African Domestic Workers Union (SADWU) was formed in 1986 from the merger of several locally based organisations, with 300 delegates attending its founding Congress. SADWU joined COSATU in 1986, by which time it had approximately 20,000 paid-up members, 50,000 signed up members, 50 full-time organisers and 14 offices.

At its height the union serviced an estimated 350,000 workers. Financial support was received from a number of foreign NGOs, much of it from the Interchurch Organisation for Development Co-operation (ICCO) in the Netherlands. Money was also raised from subscriptions collected by hand.

From 1996-1997, however, the union experienced increasing problems and went into a decline. Financial support dried up in 1996. At the end of 1996, advised by COSATU office-bearers, SADWU agreed to dissolve and the union disbanded in 1997.

In 1996 the National Labour, Economic and Development Institute (NALEDI) produced a Policy Memo examining organisation strategies for domestic workers. Trade unionism was one of the models presented as an option, and the experience of domestic workers' unions was highlighted. The document argued that SADWU's collapse was not a reflection of the failure of the trade union model. Rather, it reflected the difficulties inherent in organising domestic workers and the need for more careful strategising.

The perseverance of some of the previous domestic worker union leadership resulted in the launch of SADSAWU (South African Domestic Services and Allied Workers Union) in 2000. At that stage, the existing Unemployment Insurance Act of 1983 did not include domestic workers and this provided an important rallying point.

The need was felt to create a strong and viable union for the domestic worker sector, not only to ensure that the rights of domestic workers would be protected but also to give these vulnerable men and women a voice in the drafting of future labour legislation which would include their sector. Further assistance was secured from foreign donors and the union's Constitution was signed in Durban on 27 May 2000 by Hester Stephens (President) and Myrtle Witbooi (General Secretary).

SADSAWU's aims and objectives included the following:

- To protect and promote the interests of its members and to regulate relations between workers and employers;
- To settle disputes between workers and employers;
- To promote, support or oppose, as may be deemed expedient, any proposed legislative or other measures affecting the interests of members;
- To provide, where deemed necessary, legal assistance to members in connection with their employment;

- To work towards the unity of the working class, regardless of race, colour or religion, and to this end to work with any other progressive organisations, national or international, which share the same aims, objectives and ideas of this Union and which serve the interests of the members and the working class as a whole;
- To organise the unorganised;
- To provide training, education and improvement of skills needed by the members in their employment, and in running the affairs of the Union and to promote their standard of living generally;
- To publish newsletters, articles and other documentation on domestic work; and
- Do all such other lawful things as may be in the interest of members of the Union to promote the attainment of any or all of the above objectives.

a. SADSAWU's Role

i. National

SADSAWU engaged in numerous activities towards fulfilment of its constitutional mandate. The Unemployment Insurance Bill drafted in 2000 again excluded domestic workers and provided only for their potential inclusion following a Ministerial investigation. In its March 2001 submission on the Bill COSATU (based on consultation with SADSAWU), presented this as part of its Core Areas of Concern and in 2003 the UIA was finally amended to terminate the exclusion of domestic workers.

Since June 2001 SADSAWU has been making submissions to the Department of Labour on minimum wages for domestic workers, which have increased in urban areas from R800 per month in 2002 to R1 626 in 2011, and in rural areas from R650 per month to R1 376.² Each year SADSAWU has made submissions and each year it has been dissatisfied with the outcome.

In 2010 SADSAWU made yet another submission to the Employment Conditions Commission on wages and conditions of employment for domestic workers.

This time the submission was endorsed by COSATU as well as a number of organisations NGOs and research organisations which have rallied around SADSAWU. One year after the submission there has been no formal response from the Department of Labour or the Employment Conditions Commission, except the promulgation of the latest wage increase.

More than ten years ago, in response to the call by the Department of Labour in 1999 for public comment on minimum wages and conditions for domestic workers, COSATU made a submission³ which was presented to the Department in September 1999. In the submission COSATU made a number of recommendations which included:

- A system of graded minimum wages for domestic work
- A comprehensive education and training strategy for domestic workers
- Inclusion of domestic workers under COIDA
- Establishment of a centralized collective bargaining system for domestic workers, to be initiated by the Department of labour.

If even COSATU has been unable to achieve results via the mechanism of submissions, it is unlikely that SADSAWU can expect this strategy in itself to bear fruit in the future.

As noted below, SADSAWU continues to seek to organise and mobilise domestic workers with the limited means at its disposal. For the reasons already discussed, however, traditional trade union tactics can only have a marginal effect in this sector. As a result of its lack of opportunity to engage in collective bargaining, SADSAWU has limited options within the existing framework.

To protect the interests of its members it is compelled to rely heavily on the mechanism created by the state to take the place of a collective agreement in this sector: SD7. It has been suggested that this is problematic: SADSAWU's role, it has been argued, is primarily that of an extension of the state's machinery to implement SD7 by doing information dissemination on behalf of the Department of Labour or else serving as referral centre to the various government agencies (Ally, 2008:6-14).

The question arises whether, given the difficulty of organising at grassroots level and the union's depleted resources, forming an alliance with a "paternalistic" state that promises to prioritise the plight of domestic workers is really a bad strategy or not. Perhaps, if the state had the capacity to enforce SD7 effectively, it would have been a good strategy.

However, the resources and the capacity of the Department of Labour's inspectorate can never be adequate to monitor the more than 900 000 workplaces of domestic workers.

To sum up: the model of organising domestic workers in traditional trade unions has not developed sufficiently to establish any kind of bargaining arrangement with employers of domestic workers, who have never been organised. Hence there does not appear to be any possibility of establishing a bargaining council in terms of the LRA as it now stands.

Domestic employers, many of whom are themselves employees, may not even consider themselves employers in the traditional sense, rendering the possibility of employer bodies' all the more remote.

ii. International

SADSAWU has played a very prominent role in the International Domestic Workers Network (IDWN). In 2008 the General Secretary, Myrtle Witbooi, was elected as the first chairperson of IDWN run by and for domestic workers' organisations across the world.

By virtue of her position she has been actively involved in the work of the IDWN, building the organisation and leading the campaign for an ILO Convention on Domestic Work which resulted in adoption of ILO Convention 189 for domestic workers in June 2011. SADSAWU is also one of the IDWN representatives of the Africa Region.

b. SADSAWU: Institutional Status

The combined and uneven development of SADSAWU as an organisation of domestic workers is most aptly captured in the paradox of the notice served on SADSAWU in March 2011 by the Registrar of Labour Relations of his intention to cancel the registration of SADSAWU as a trade union.

The irony is that this notice was served to the chairperson of the IDWN, a critical structure in bringing about the adoption of Convention 189, on the eve of the momentous occasion in June 2011. The very base that elevated SADSAWU on to the world stage, was crumbling

De-registration of SADSAWU was based on three areas of non-compliance with the Act (Section 106 2A (b)) as follows:

1. The trade union has ceased to function in terms of its constitution
2. The trade union did not comply with the provisions of
 - a. section 98: Accounting records and audits
 - b. section 99: Duty to keep records
 - c. section 100: Duty to provide information to the registrar

3. The trade union is not independent

This may be seen as an outcome of the factors discussed above. Given the peculiar nature of the sector, SADSAWU has been able to comply with neither the requirements of a formal trade union federation (COSATU), nor with the legal requirements set out in the LRA.

SADSAWU is not a member of COSATU, largely because it is unable to pay affiliation dues. Unlike other trade unions, domestic worker unions, even if they have a significant membership base, have found it extremely difficult to develop an effective membership due collection system.

Membership dues are the mainstay of standard worker unions. Unfortunately, this has not yet become a reality for domestic workers. Any organisational development strategy would have to address this problem effectively.

4. STRATEGIES FOR EFFECTIVE ORGANISATION OF DOMESTIC WORKERS

Despite the fact that SADSAWU has been de-registered, it remains active as an unregistered union in campaigning for the rights of domestic workers. It also continues to highlight abuses such as the illegal exploitation of workers by certain recruitment agencies, which effectively deal in forced labour, and sexual harassment at work.

Moreover, it is calling for the extension of COIDA to domestic workers. At an international level SADSAWU continues to play a leading role in the International Domestic Workers Network (IDWN).

Before its deregistration SADSAWU put in place a strategy for addressing the issues of non-compliance:

Table 1: SADSAWU's strategy towards compliance with the LRA

Area of non-compliance in terms of the LRA	Reasons for non-compliance	Strategies towards compliance
SADSAWU has ceased to function in terms of its constitution	The existing constitution is not appropriate for the domestic work sector	<ul style="list-style-type: none"> • Revision of the SADSAWU constitution with the assistance of a legal expert
	Lack of resources and organisational skill	<ul style="list-style-type: none"> • Support organisations have been brought on board to capacitate the existing committee to function in accordance with its constitution and the provisions of the Act and to grow SADSAWU into a viable and sustainable organisation which serves the interests of its members in particular and domestic workers in general
		<ul style="list-style-type: none"> • SADSAWU AGM
<p>SADSAWU did not comply with the provisions of the Act:</p> <ul style="list-style-type: none"> •S98: Accounting Records and Audits •S99: Duty to keep records •S100: Duty to provide information to registrar 	<ul style="list-style-type: none"> •Lack of resources and organisational skill •Lack of administrative capacity •Inadequate record keeping systems 	<p><i>S98: Accounting records and audits</i></p> <ul style="list-style-type: none"> • Appointment of Auditors • Revamp of financial record keeping system • Financial Audit
		<i>S99: Duty to keep records</i>

		<ul style="list-style-type: none"> • Audit of existing membership records • Design and testing of membership system • Capacitate staff to administer the membership system • Implementation of membership system
		<p><i>S100: Duty to provide information to registrar</i></p> <p>Revamp of the administrative and finance systems will facilitate general improvement in the information flow, more especially regarding information required to be submitted to the registrar</p>
SADSAWU is not independent		SADSAWU is putting in place a sustainability strategy (financial and membership) intended to contribute to the overall sustainability of the union and ensure its independence.

The Registrar, however, did not give SADSAWU the opportunity to implement this strategy, and SADSAWU has resolved not to appeal. The possibility of future re-registration, or registration as a relaunched organisation, will not be considered in this document. The more immediate reality is that, to become a viable organisation under any name, SADSAWU will need to find solutions to the problems that have beset it so far.

Three tasks stand out in particular. In the first place SADSAWU will need to achieve financial sustainability, including appropriate methods of collecting membership dues. Secondly, it would need to think very carefully what it is offering its members in return for membership dues; in other words, which service(s) or benefits to prioritise in order to attract workers by word of mouth.

This, in turn, points to perhaps the biggest challenge of all: redrafting the constitution of SADSAWU in such a way that it is not only possible for the organisation to function in terms of it (unlike the existing constitution), but that the constitution reflects and promotes the real priorities of the union, including the empowerment of its members.

Such an exercise will make it necessary to arrive at concrete answers to the questions noted above. If the conventional union model has not proven viable, a new constitution will need to define the organisational structure and activities of a union geared to the actual needs and circumstances of domestic workers.

Research both nationally and internationally suggests that answers may be found in the area described as “social movement unionism”, but this is a broad field with much variety and no ready-made models. Each organisation needs to find its own solutions to its own specific challenges.

To operate as a registered trade union in South Africa, however, even a reinvented SADSAWU would need to fit the LRA’s definition of “trade union”: its “principal purpose” must be “to regulate relations between employees and employers, including any employers’ organisations”.

This makes it necessary to confront head-on the challenges presented by the isolation of domestic workers and the largely unorganised nature of the sector. It is beyond the purpose of this document to engage with these questions in detail. However, it should be noted that there are strategies worthy of exploring. In particular:

- Existing employment agencies of domestic workers in the formal sector are legally-regulated workplaces where it is not only possible to begin to organise workers collectively and achieve organisational rights, but it is also possible to bargain collectively with the employer on behalf of those workers.
- Following the precedent of the private security sector, it may be possible to promote negotiation about the content of SD7 and its annual revision, which the Department of Labour could incorporate in the promulgated amendments.
- This could take place between an organisation or organisations with membership among domestic workers and representatives of large-scale as well as small-scale employers in the sector. The “benefit” for individual employers as well as workers would be to have a voice in determining the conditions by which they will be bound. Such negotiations would be a learning curve for all concerned and could lead to the development of an appropriate collective bargaining model.

It is important to repeat that such a model would include none of the features which render the existing model inappropriate. Although the challenges in the domestic worker sector are even greater than in the private security sector, they will need to be overcome if there is to be progress. Inspiration may be gained from the emerging trade union movement of the 1970s, when the obstacles were enormous but workers even in small to medium workplaces found ways and means of building organisations.

NGOs, however, also played a significant role in facilitating the first steps. Though SADSAWU embodies a wealth of experience, strategic alliances with NGOs and civil-society organisations could be as important today as in the 1970s in breaking through the current barriers.

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Appendices

DOMESTIC WORKERS SUMMIT HELD ON THE 27-28 AUGUST 2011 DECLARATION

On the 27-28 August 2011 the South African Domestic Services and Allied Workers Union (SADSAWU), Congress of South African Trade Unions (COSATU), National Council of Trade Unions (NACTU), Federation of Unions of South Africa (FEDUSA) , International Labour Organisation (ILO), Social Law Project (SLP), Labour Research Service (LRS), African National Congress – Women's League (ANCWL), and Progressive Women's Movement of South Africa (PWMSA), have jointly come together to celebrate Women's Month and to highlight the call to the South African Government to start the processes of ratifying Convention 189 (C189) on Decent Work for Domestic Workers.

The 100th session of the International Labour Conference (ILC) on 16 June 2011 adopted the first ever Domestic Workers Convention and Recommendations (R201) on Decent Work for Domestic Workers. The Convention recognises the “significant contribution of domestic workers to the global economy” and that domestic work is “undervalued, invisible, and mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities”.

The Summit recognises that domestic work sector has been growing socially and economically but domestic workers remain one of the most undervalued, underpaid and unprotected by the legislations. South Africa's Sectoral Determination 7 (SD7) on domestic work provides standards for conditions of employment, minimum wages, and Unemployment Insurance Fund (UIF) benefits, among other. The summit identified a number of areas covered by C189 and R201 not provided for in SD7, such as, Occupational Health and Safety (OHS), maternity leave, protection of migrant workers, right to repatriation, right to privacy, paid overtime and standby, right of a

domestic worker to education, abolition of child labour, and right to collective bargaining. The summit further recognises the need to align SD7 with C189 and R201 by including these provisions.

The summit also recognises the massive and significant contribution of domestic workers to the economy of South Africa and globally and that the South African Sectoral Determination 7 has established a good basis for the drafting of the Convention and Recommendation. Hence, the call and emphasis by the Domestic Workers Summit for the South African Government to be the first country to ratify Convention 189 on Decent Work for Domestic Workers.

It is estimated that there are about 1 million domestic workers in the country, most of whom are black and African in particular. The government statistics in terms of the latest Quarterly Labour Force Survey (QLFS) there is 876000 domestic workers. However, the number of domestic workers registered with the UIF amounts to 647126 (July 2011 figures).

The conference was addressed by among others the Honorable Minister of labour Mildred Oliphant, the COSATU Deputy General Secretary Bheki Ntshalintshali, the Director of the South African ILO office, Vic Van Vuuren and the President of the ANC Women's League Angie Motshekga.

The Summit handed over Convention 189 on Domestic Work and Convention 183 on Maternity Protection to the Minister of Labour for her to start engaging with the relevant structures in order to enable the South African government to be the first country to ratify the Convention. The two conventions were also handed over to the President of ANCWL to engage the ruling party when formulating policies.

The Summit informed workers on what the Convention entails and what it means for South African domestic workers.

The Summit resolved to:

- Embark on a study to assess the contribution of domestic workers to the economy as all women are domestic workers whether paid or unpaid
- Demand that government should penalize employers for non-compliance.
- Demand that employers should provide for housing that is closer to the workplace.

- Unite domestic workers and encourage workers to join trade unions.
- Call on established trade unions to assist domestic workers organizations financially, technically and the provision of infrastructure e.g. facilities for meetings etc.
- Raise awareness of Convention 189 through bodies such as the CCMA
- Translate the Convention in to mother tongue languages.
- Establish an inclusive national forum comprising of different trade union federations such as COSATU, FEDUSA, NACTU and domestic workers' organizations in order to build a strong united voice to carry out this programme.
- Demand the establishment of a bargaining council for domestic workers
- Campaign for the extension of the Occupational Health and Safety Act (OHSA) to domestic workers.
- Support the banning of labour brokers
- Develop organizational capacity of domestic workers' trade unions
- Establish recruitment campaigns that will involve all stakeholders and develop strategies that take into account the specific situation of domestic workers.
- Use all forms of media e.g. community radio stations to inform domestic workers about their rights, in particular, Convention 189 and SD7.
- Sensitize employers about the Convention and other policies and laws on domestic workers.
- Include protection and advancement of domestic workers' rights through, among other, programmes of trade union federation affiliates'.
- Campaign for trade union federation affiliates' members to allow their domestic workers to join trade unions.
- Encourage trade union federation affiliates' to invite domestic workers trade unions to their educational programmes.
- Calls on government to provide skills development systems that would empower workers beyond domestic work.
 - Demand exemption or relaxation of trade union registration requirements for domestic workers' organizations and other vulnerable sectors.
 - Campaign for stronger compliance and enforcement measures through, among other, inspectorate systems.
 - Organize a 'domestic workers parliament' so that domestic workers views could be heard by politicians.
 - Convene an annual domestic workers' summit to evaluate progress and develop new strategies

- Establish domestic workers' watch programs in the areas where they are working
- Ensure that domestic workers earn a living and decent wage.
- Use the national days to blitz and raise awareness on domestic workers legislations
- Migration laws and procedures should be amended such that immigration officials should not be involved in labour disputes
- Ensure that domestic workers not be deported whilst their labour case is still in dispute and unresolved.
- Housing allocation to domestic workers should be closer to their workplace area



The President holding a micke and a Chairperson of SADSAWU giving the minister of DOL a convention 189 with recommendation 201 2 with the treasure of COSATU observing the processes

Submitted to the South African Governing Council of the African Peer Review Mechanism (APRM) 2006

4.3 Domestic Workers

According to the LFS, South Africa employs more than one million domestic workers, making it one of the largest sectors of the labour market. The sector is the largest employer of women workers, in particular African women. The impact of Apartheid has made the sector very race and gender specific. According to the Department of Labour just under 60% of workers are

employed within rural communities. Four fifths of domestic workers are women.

Similar to many other vulnerable sectors such as farm workers, the sector is extremely exploitative, with many workers employed under oppressive and exploitative conditions, low wages, racist practices and poor job security. According to recent surveys, domestic workers remain the lowest paid workers, with 89% earning less than R1000 per month, with 47% of these workers earning with 89% earning less than R1000 per month, with 47% of these workers earning less than R500 per month.

Many domestic workers enter the sector because of little or no opportunities to formal education. Similarly to farm workers, more than 50% of domestic workers have had access to primary education or no education at all, with 35% of workers in the sector having some form of secondary education but not completing matric. This could be largely attributed to the socio-economic conditions faced by many low-income homes where women are encouraged to seek employment instead of obtaining formal education to support the immediate and extended family unit.

While domestic workers are defined as employees, with paid domestic work recognized as a form of skilled labour through the Domestic Chamber of the Services Sector Education Training Authority (SETA), the level of access to skilled training remains a fantasy to many domestic workers.

20

Measures to Protect Domestic Workers

The introduction of Sectoral Determination 7 for domestic workers in 2002 signalled a significant step from government in seeking appropriate measures to address the vulnerability of workers in the domestic sector. The Determination establishes for the first time a minimum wage for the sector, provides for various leave provisions, stipulates hours of work, establishing contracts of employment and many other conditions of service to protect and provide a minimum floor for domestic workers.

Here again we wish to raise our dissatisfaction with the artificial distinction created between Area A and B as in the case of farming workers.

While the Determination establishes a minimum on wages and here again we wish to raise our dissatisfaction with the artificial distinction created between Area A and B as in the case of farming workers.

While the Determination establishes a minimum on wages and conditions of employment, this must be seen in the context of coming from a low base for workers in the domestic sectors. Due to the vulnerability of workers in the sector and the low level of unionization (3%), greater effort should be made by government to legislate improvements in wage rates and conditions of

service that takes into account socio-economic conditions and living standards.