



WHEN THE JOB HURTS: Workplace Injuries and Disease Among South Africa's Domestic Workers

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Acronyms/ Abbreviations

BCEA	Basic Condition of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
CHI	Chris Hani Institute
COIDA	Compensation for Occupational Injuries and Diseases Act
COSATU	Congress of South African Trade Unions
DITSELA	Development Institute for Training, Support and Education for Labor
ILO	International Labor Organization
IOD	injuries on duty
LRA	Labor Relations Act
NFSAS	National Student Financial Aid Scheme
OHSA	Occupational Health & Safety Act
SD7	Sectoral Determination 7
SADSAWU	South African Domestic Services and Allied Workers Union
UIF	Unemployment Insurance Fund Act
WIEGO	Women in Informal Employment: Globalizing and Organizing
ZEP	Zimbabwe Exemption Permit

Introduction

Since 1993, South Africa's Compensation for Occupational Injuries and Diseases Act (COIDA) has provided a system of no-fault compensation for employees who contracted an occupational disease or were injured from, or during, their employment. While it included domestic workers hired by private companies, COIDA has excluded domestic workers employed in private homes.¹

This study was commissioned by the Solidarity Center to investigate the incidence of occupational injury and illness among domestic workers in South Africa. It includes a series of case studies illustrative of the nature, consequences and context of injury and diseases to which domestic workers in South Africa are exposed on the job. The study was undertaken to understand what the COIDA exclusion of privately employed domestic workers means for workers, and to highlight the difficulty domestic workers who are covered by COIDA have in accessing compensation.

Background

Around the world millions of people, the vast majority of them women, are engaged in domestic work. Their work, which is very often conducted in private homes and outside the purview of labor law—leaves them vulnerable to abuse and exploitation, and without recourse if their health is adversely affected on or because of the job. According to the International Labor Organization (ILO),² “there are at least 67 million domestic workers over the age of 15 worldwide, 80 percent of whom are women. About 17 percent of domestic workers are migrant workers.”³ Women and children, especially migrants, significantly contribute to the domestic labor workforce, and approximately 96 percent of domestic workers are women.⁴ A study by de Villiers and Tylor revealed that “in South Africa, domestic work represents a substantial source of employment, with approximately 953,000 black women currently active in this sector, representing 5.84 percent of the total South African labor force.”⁵

Domestic workers in South Africa face many difficulties, including poor working conditions and labor exploitation. Their situation is aggravated by the fact that most domestic work is performed in private households, involving personal relationships that are difficult to regulate.

Several international frameworks, including the ILO Social Security Convention, seek to protect against economic and social distress caused by “stoppage or reduction of earnings” resulting from, among other grounds, employment injury and death.⁶ Article 22 of the Universal Declaration of Human Rights, provides that “everyone” has the right to social security, as does Article 9 of the International Covenant on Economic, Social and Cultural Rights. In General Comment 19, the Committee on Economic, Social and Cultural Rights specified that state social security systems should include employment injury and must be available, adequate and accessible. Article 13 of ILO Convention 189 on Decent Work for Domestic Workers, which South Africa ratified in 2013,⁷ specifies that “every domestic worker has the right to a safe and healthy working environment,” and each ILO member state shall take “effective measures ... to ensure the occupational health and safety of domestic workers.”

Section 27 of the South African Constitution guarantees everyone the right to have access to social security, including social assistance, if they are unable to support themselves and their dependents. National legislation such as the Basic Condition of Employment Act (BCEA), which was promulgated in 1997 and amended in 2002, the Labor Relations Act (LRA) and the Sectoral Determination 7 (SD7) as amended August 29, 2014, include domestic workers within their ambit. However, while health and safety

are priorities for all workers regardless of their employment status, domestic workers are not covered by COIDA. In October 2018, the Committee of the ICESCR recommended that South Africa extend the legislative framework of COIDA to domestic workers, and that regular labor inspections be carried out in the domestic setting, without notice or warrant.⁸

Domestic Workers and Exclusion from COIDA

Domestic workers undertake care work for family members, including children, the disabled, elderly and sick, providing essential services, particularly for working women. Among the mining communities of South Africa, women are chiefly responsible for the care of those suffering from mining-related diseases such as tuberculosis, silicosis and asbestosis. In urban and rural areas, predominantly female caregivers attend to those suffering from HIV/AIDS, tuberculosis and other diseases, as well as the elderly and disabled.⁹ South Africa has also witnessed the proliferation of chronic diseases such as cancer, which require quality palliative care, while it contends with the HIV/AIDS pandemic. The midterm report by Statistics South Africa (StatsCan) of 2019 revealed that:

The estimated overall HIV prevalence rate is approximately 13.5 percent among the South African population. The total number of people living with HIV (PLWHIV) is estimated at approximately 7.97 million in 2019. For adults aged 15–49 years, an estimated 19.07 percent of the population is HIV positive.¹⁰

Care work is considered ‘women’s work,’ and often goes unremunerated or pays poorly.

Care work is considered “women’s work,” and often goes unremunerated or pays poorly.¹¹ This stereotype contributes to the devaluation of care work in the public sphere. Indeed, Paula England¹² argues that men who undertake employment in women-dominated sectors are despised just like their female counterparts. Likewise, Dorothy Sue Cobble¹³ argues that men who engage in care work will suffer a wage penalty.

Employers of women workers often take full advantage of male-breadwinner biases,¹⁴ which overlook the global feminization of the labor market and the new economic reality that women engage in paid work as independent and autonomous individuals without any male attachments. Some authors maintain that it is no longer relevant to regard care work or other traditionally socialized tasks in terms of gender.¹⁵

Ironically, most care workers in South Africa have limited recourse to compensation if they become disabled or ill while taking care of others. In the case of occupational injuries or diseases, and even in situations of death, most domestic workers and their dependents are not covered by COIDA or, if covered, they cannot access compensation.

Compensation for Occupational Injury, Diseases or Death

The Compensation for Occupational Injuries and Diseases Act (COIDA) was introduced as a form of no-fault insurance for occupational injury and disease that arise out of and in the course of employment. It replaced the common law that based liability on fault. According to the act, employers must contribute to a centralized state compensation fund, which gives medical benefits to workers and provides for workers’ dependents in the event of disablement or death.

Section 22 of COIDA is broadly constructed and “deems” an accident to have arisen “out of and in the course” of employment, if the director-general is of the opinion that the employee was acting for or in the

interests of the employer, even if at the time of the accident, he or she was acting contrary to any law or an order of the employer. Furthermore, COIDA provides for compensation arising from occupational hazards outside the borders of South Africa in certain circumstances. COIDA Schedule 3 lists common occupational diseases; if an employee contracts a disease that is not listed, he or she bears the onus of proving that the disease is related to his or her work.

Domestic Workers and Access to COIDA

COIDA includes non-standard workers who have a contract of service with an employer, including those employed through labor brokers or service providers, as well as apprenticeships and casual employees. COIDA applies 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.”

However, COIDA explicitly excludes domestic workers employed in a private household, as well as people undergoing military training, employees of the South African Police Services, members of the South African National Defense Force and anyone employed outside of South Africa for 12 consecutive months. It also excludes workers guilty of serious misconduct and workers disabled for less than three days.¹⁶

This exclusion of domestic workers employed in private households raises the question of whether domestic working conditions and needs are so distinct from other forms of employment included in COIDA as to render their exclusion justifiable. This question is sharpened by studies that indicate that small businesses have higher rates of injury than large businesses. Similarly, non-standard forms of employment suffer higher rates of injury than standard jobs.¹⁷ The reason suggested in these studies of injury rates is these categories of employees do not receive adequate training.¹⁸

Employer ‘Immunity’

In COIDA Section 35, an employee is barred from instituting a common law claim for damages against his or her employer. This immunity of employers from civil damages was challenged in the Constitutional Court in the case of *Jooste v Score Supermarket Trading* in 1999. In the *Jooste* case, the Constitutional Court ruled that the employer’s immunity from civil damages under Section 35 is rationally connected to COIDA’s purpose of providing no-fault compensation from a fund to which employers are required to contribute. According to the Court, although the legislature could have created a system that permitted a common law claim for damages, in addition or as an alternative to making claims from the fund, it chose not to do so. This was considered a complex policy choice, which the court declined to address.

In a more recent case before the Pretoria High Court, Maria Mahlangu, a domestic worker employed in a private home for 20 years, died in 2012 when she fell into her employer’s swimming pool and drowned in the course of her employment.¹⁹ Her dependent daughter approached the Department of Labor and was informed that she was not entitled to compensation because of the exclusion of domestic workers from COIDA. She then approached the High Court, arguing that the exclusion of domestic workers from COIDA was irrational and violated constitutional rights to equality and dignity. Initially, the Minister of Labor defended the exclusion, arguing the matter should not lie with the courts since legislative amendments were in the process of being drafted, and again, opposed retrospective application of COIDA. On May 23, 2019, the Pretoria High Court declared the exclusion of domestic workers from COIDA to be unconstitutional but postponed the hearing on retrospective application. However, the declaration of unconstitutionality will only come into effect after the Constitutional Court has confirmed the finding.

The hearing on retrospective application took place on the October 17, 2019, at the Pretoria High Court which granted that “the declaration of invalidity must be applied retrospectively to provide relief to other domestic workers who were injured or died at work prior to the granting of the order.” Following this ruling, Socio-Economic Rights Institute of South Africa (SERI) Law Clinic, which is representing Sylvia Mahlangu, the daughter of Maria Mahlangu, submitted an application for confirmation with the Constitutional Court²⁰ on November 6, 2019.

Methodology

This study was conducted March 18 to April 10, 2018, and employed a combination of quantitative and qualitative approaches to gather and analyze data. The tools included a systematic review of existing literature and documents, WhatsApp groups and Facebook surveys, meetings and field observations, photography and in-depth and key informant interviews.

Like their counterparts in other parts of the world,²¹ domestic workers in South Africa have adopted social media platforms such as WhatsApp and Facebook to interact, share everyday work experiences and exchange information related to job opportunities. For migrant workers, social media platforms are essential for sharing information related to legal documentation. Zimbabweans have forged unity around the issue of a regularization permit popularly known as the Zimbabwe Exemption Permit (ZEP), consisting of members across all the nine provinces in South Africa.

Researchers surveyed 90,794²² WhatsApp and Facebook participants for this study and, from these groups, recruited participants who had reported having an occupational injury or disease. An invitation to participate, which also explained the objectives of the study, was posted three times on the two platforms. WhatsApp and Facebook groups surveyed included:

- “ZEP Health Group,” comprised of 248 members, which addresses issues around access to health services for migrants
- Three WhatsApp groups known as “ZEP Domestic Workers,” established in 2017. These include “ZEP Domestic Workers Group 1,” with 221 members; “ZEP Domestic Workers Group 2,” also with 221 members; “ZEP Domestic Workers Group 3,” with 164 members
- “Domestic Warriors Group,” with 18 members, established by the South African Domestic Service and Allied Workers Union (SADSAWU) and the Congress of South African Trade Unions (COSATU) in 2016
- Makhox Women’s League WhatsApp group, with 170 domestic worker members
- Makhox Women’s League Facebook group, with 90,000 participants from South Africa and across the globe.

Study authors also undertook a systematic review of relevant documents, including COIDA and medical reports, as well as literature, email and secondary data to understand how gaps in COIDA allow the Department of Labor to deny compensation for injuries sustained on duty.

Sixty domestic workers²³ participated in surveys conducted during meetings, including in-depth interviews in the following provinces: Eastern Cape, Gauteng and Limpopo, Cape Town, in addition to one partial interview in KwaZulu-Natal, which was conducted through WhatsApp. No further engagement with workers took place if they indicated that they were never injured nor had contracted diseases at work. Six key informant interviews involving one Commission for Conciliation, Mediation and Arbitration (CCMA) official, three South African Domestic Service and Allied Workers Union (SADSAWU) leaders and two migrant rights organizations’ officials also were conducted.

Limitations of the study

This study involved an issue often overlooked by unions, worker organizations and workers themselves; as a result, few cases of occupational injury and illness among domestic workers are reported. In addition, this data is not easily accessible from the Department of Labor, which is the custodian of the Occupational Health and Safety Act (OHSA) and COIDA.²⁴

Most labor disputes center on wages, which is within the jurisdiction of the Commission for Conciliation, Mediation and Arbitration (CCMA) and is a popular labor dispute institution among workers. As a result, the CCMA does not receive any cases related to COIDA, although it does preside over sexual harassment cases involving domestic workers.

Workers are often scared to report cases since they blame themselves for occupational injuries and fear dismissal.²⁵ Migrant domestic workers were particularly reluctant to come forward; indeed, they feared participation in this study would result in arrest and deportation. It is also often difficult for workers to prove that certain occupational diseases were contracted through the work they do and, as a result, they tend to ignore their right to health and safety.

The definition of domestic work as provided in COIDA is confined to domestic work in private homes. However, many workers, like housekeepers and cleaners, are employed by private companies and are not excluded from COIDA, but still face difficulty in proving their claims. The distinction between domestic workers in private homes and other domestic workers made it difficult to identify potential participants for the study.

This study was completed in a relatively short timeframe and was designed to constitute a preliminary “snapshot” of the issue, and as such did not entail a wider spectrum of interviews with domestic workers across the country.

Key findings

Domestic workers reported injuries that included: lacerations, major cuts or stab wounds; skin damage/ burns; dog bites; limited functionality of hands, arms, legs and shoulders, either temporary or permanent; head injuries; vehicle accidents; chronic spinal cord and back pains; arthritis; a brain tumor; high blood pressure; diabetes; tuberculosis; asthma (from cleaning swimming pools); fractured arms, knees or elbows; and, in worst cases, blindness, deafness and death (miscarriage).

Injured domestic workers were reluctant to report their cases for fear of reprisal. Domestic workers eligible for COIDA benefits also were reluctant to report to the Labor Department, especially when still working for employers involved in their cases. Several respondents preferred to “remain silent” for fear of reprisals such as losing jobs—as in the cases of Abigail, Bulelwa, Ellen, Funeka, Maria, Rebecca and Thelma. Some injured workers reported unfair dismissal subsequent to their injury, as reflected in the cases of Karabo, Nomzamo and Rodric.

Domestic workers covered by COIDA are unable to access the claims process. Some respondents were reportedly unable to get time off work to pursue their cases or indicated that documenting and proving their claims was prohibitively expensive.

Domestic workers covered by COIDA believe they will not get fair treatment. The Department of Labor, which is the custodian of COIDA including the Occupational Health & Safety Act (OHSA), is perceived by some domestic workers as colluding with employers, denying compensation for workplace injury and illness based on technicalities. Field observations suggest that domestic workers are censored and sometimes threatened when they speak out about workplace injuries, as revealed through emails shared with researchers conducting this study.

Domestic workers often are unaware of their workplace rights. This was shown to be equally true of native-born and migrant domestic workers, even though the latter often possess higher educational qualifications. Job mismatches are common among highly skilled female migrant workers (such as teachers) who would rather engage in domestic work during the liminal phase while they navigate through the immigration system to acquire the necessary work permits in line with their qualifications.

WhatsApp groups proved to be an effective tool for information-sharing and peer support among domestic workers. A mobilization and recruitment campaign by the SADSAWU on COIDA and domestic worker rights effectively used WhatsApp groups to connect domestic workers and engage them with the campaign.

Participant Background

Gender: The vast majority of domestic workers globally²⁶ are women, and it is no different in South Africa. Of 60 initial participants in the survey, five were male. Male participants reported carrying out handiwork and gardening while laundry, cleaning, general housekeeping and caregiving were predominantly undertaken by female participants.

Age: Age is a critical variable since it determines the measure of experience and knowledge of the domestic workers in the sector. However, it quickly became apparent that domestic workers' challenges and even opportunities are cyclical and that views are often widely shared and resonate across all specified age groups. While this does not undermine the importance of age as a variable, it suggests the uniformity of the struggles of domestic workers across all age groups. Of the 60 participants in this study, 17 were between the ages of 25 and 29; nine were between the ages of 30 and 34; 11 between the ages of 35 and 39; 13 between 40 and 45; two between the age of 45 and 49; and eight above age 50. Three participants chose not to disclose their age.

Marital Status: Marital status is a useful variable because the interpersonal nature of domestic work often has wider implications for the family of the worker concerned. However, marital status as a qualitative way of measuring wider socioeconomic status cannot function independently and must be complemented by other variables such as dependent's age and gender. Of the total number of participants in the survey, no general conclusions could be inferred apart from the socioeconomic support that marriage frequently brings to domestic workers in the event of an illness or an injury. Of the 60 participants, 22 identified themselves as being married, although we did not probe further on the question of the type of marriages; 27 were single and 11 identified as widowed, divorced or separated.

Dependents: The number of dependents is a key factor in the dispensing of COIDA benefits to the appropriate beneficiaries. Despite the exclusion of domestic workers from COIDA, the act recognizes that the dependents of workers are negatively affected in the event of the worker's injury, illness or death. This statutory recognition underpins the use of dependents as a variable in the study. The definition of

dependents for the purposes of the study is guided by the definition contained in the COIDA. Of the total number of participants in this study, 19 reported having two dependents, 13 had three dependents, 11 had four dependents, nine had five dependents, five had six dependents and three had no dependents.

Education: The participant's level of education was ascertained to determine literacy with respect to knowledge and understanding of workplace rights and employment contracts. However, no specific correlation could be inferred between the level of education of a domestic worker and the impact of COIDA's exclusion of domestic workers. While the level of education does not always translate into a knowledge of workplace rights, this does not undermine the significance of a domestic worker's level of education nor does it diminish the empowering effect that education has on an individual. Seven participants said they had primary education, 37 had acquired secondary education, 15 had higher or tertiary²⁷ education and one respondent reported not having received any formal education.

Cases

The following section presents individual interviews of domestic workers or their relatives or friends. Secondary interviews were critical in cases that involved deceased domestic workers or those who feared reprisals because they were still working for the same employer. In all case studies, we have used pseudonyms to protect the identity of the interviewees and transcribed interviewee responses using, as far as possible their own language and idiom of speech.

VITUMBIKO²⁸

Occupational Injury or Disease: Broken hand and attempted rape

Participant background

Vitumbiko is a migrant domestic worker from Malawi. She came to South Africa in 2009 to join her fiancé, who worked as a gas station attendant. They got married the same year. Her husband earned 1,400 rand per month and rented a backyard room in one of the southern parts of Johannesburg. Vitumbiko met her former neighbor from Malawi in that suburb who later assisted her in finding domestic job to supplement her husband's income. Her first employer was a white woman who later emigrated to Europe. Thereafter, she took up part-time employment as a domestic worker with Lerato and has been working for her since 2011.

Employer background

Lerato is South African woman, employed as an accountant and owner of a house in one of the southern suburbs. She lives on her own. According to Vitumbiko, her employer is a "very nice person," and this is part of the reason why she continues to work for her. Lerato gives all her unwanted household property to Vitumbiko and opened a personal bank account for her. Vitumbiko claims that her employer paid for her work permit and vows never to leave her until she migrates back home. She also wrote a reference letter that Vitumbiko used to find a second, part-time job where she works for another family located in the same suburb. Every year, Lerato pays a bonus and purchases Christmas goodies for her employee as part of her appreciation for loyalty. In 2015, Lerato contributed some financial support toward Vitumbiko's baby, who was born prematurely and died.

Interview

While Vitumbiko has worked for Lerato for seven years, she did not sign or enter into a written contract. Rather, the employment contract was an oral agreement, under which Lerato is entitled to annual leave in December and sick leave. She earns 2,400 rand per month and works four days a week.

In 2014, on a Thursday morning, Vitumbiko went to work as usual. After cleaning the house, she did laundry and went outside to hang it on the line, leaving the keys to the door at the front of the house, as she usually did. Lerato had previously advised her to be cautious whenever she was alone at home since the home is “very quiet during the day.” While she was busy hanging the clothes on the line at the back of the house, an intruder jumped through the fence and entered the house. When Vitumbiko entered the house, a very tall man stood in front of her holding a knife. He charged toward her demanding keys for the safe, laptop and television.

Vitumbiko said she was dumbfounded and had no option but to just point toward the bedroom where her employer’s laptop was. The intruder grabbed the laptop and in a “flash of lighting” dropped the laptop and pulled Vitumbiko toward him. She screamed very loudly but was cautioned to keep quiet as the intruder instructed her to lie on the bed. By then, according to Vitumbiko, she had become fully “conscious” and was ready to resist. The intruder grabbed her by force. Vitumbiko, who said she does not know where she got the energy from even to this day, grabbed his penis. He screamed and began to wrestle with her attempting to free himself. In this scuffle, he twisted Vitumbiko’s hand to free himself.

Vitumbiko screamed and was heard by a domestic worker in a neighbor’s house, who called out to see what was amiss. The intruder then fled the house, leaving behind everything, including his knife. Vitumbiko fell to the ground and screamed louder. As a result, the neighbor pressed the panic button of her employer’s alarm and a neighborhood security company responded. By the time they arrived at the house, the intruder had escaped; Vitumbiko was lying on the floor with a twisted hand crying out of pain. Other neighbors also came to Vitumbiko’s rescue and contacted her employer, who drove home in the company of security personnel. She reported the case to police, who promised to investigate the case and apprehend the culprit. To date, no one has been arrested.

Lerato took Vitumbiko to a private doctor where she was treated and received trauma counselling. A scan of her “twisted” hand was taken, and the doctor diagnosed that one of her wrist tendons had been torn and the elbow tissues were damaged in the altercation. She was then referred to a public hospital where her hand was covered with a cast for six weeks.

Her employer, Lerato, covered all medical expenses, including transport costs. In addition, she paid Vitumbiko R5,000 and granted her three months leave. During the three months of sick leave, Lerato paid Vitumbiko half of her salary. Vitumbiko’s friend worked for Lerato in her place as she nursed her injury, and Lerato begged her to come back and work for her.

After three months sick leave and, at the time, seven months pregnant, Vitumbiko decided to go back to work to prepare for her coming baby and out of loyalty to her employer. Nonetheless, her hand still gives her problems, especially during winter or rainy season, when it is cold. She cannot lift heavy things and struggled when she gave birth to her third child after a previous miscarriage.²⁹

When asked whether she knows her rights as a worker, Vitumbiko said she did not know of any organization for domestic workers, although she participated in a WhatsApp group for Malawian domestic workers whose primary objective is to assist members to secure jobs. The WhatsApp group members use this platform to counsel each other and discuss ways to send money; household items (e.g., stoves, radios, bicycles) and groceries back to families in Malawi. Members have also initiated a Stokvel and burial society through this platform.

Vitumbiko expressed fear that the intruder might come back as his face had been exposed, and she could easily identify him in a “suspect parade.” She also fears that, as a migrant, she could be killed since no

one has been apprehended. Her church elders have counselled her. Her husband, extended family and employer are very supportive. She has shared her experience with fellow WhatsApp group members and friends and advised them to be very cautious and alert as they undertake their duties in their employer's private homes.

THELMA

Occupational Injury or Disease: Dog bite

Participant background

Thelma migrated to South Africa from Zimbabwe in 2008 and since then has been working in the domestic worker sector and investing her time in the struggles of domestic workers, particularly, those involving migrants. Thelma worked as a live-in domestic worker a suburb of Johannesburg at the time of her occupational injury.

Having been educated about worker rights through social media platforms like WhatsApp and Facebook, she and others established a union to bring together migrant domestic workers to fight exploitation. While Thelma certainly occupies a leadership role among domestic workers, the decision to interview her is primarily based on her experience as a domestic worker and the relevance of her occupational injury to our study. In her case, Thelma was bitten by her employer's dog.



Employer Background

Thelma has worked for various employers since her arrival in South Africa, and her injury occurred while she was working for Ishmael, a widower. While she narrated mixed experiences with several employers, she emphasized that she has always tried to ensure a professional relationship with all her employers. She described her current employer as "a God-sent angel."

Interview

Thelma explained that she did not enter into a written contract with her employer as she "joined this family after her sister recommended her to take over." Job referrals are very common among domestic workers and very often an employer would prefer to hire workers based on trust and relationship that existed between them and the departing worker. According to her, the sister introduced her to Ishmael, who accepted her through a verbal contract. Thelma could not contest the verbal agreement since she said, "I thought we had no rights as migrants."

Thelma said that during her employment, she played a motherly role to her employers' family, which included the widower and his two sons. She described "bad blood" between the father and his sons, who accused him of abusing their mother when she was still alive. The family relationships were troubled and would often culminate in physical fights. As such, she played a dual role as a domestic worker and family counsellor to the sons. When asked if these physical fights extended to her, she said that all family members respected her and none had ever raised a hand to her or sexually harassed her.

In April 2012, Thelma had been working in the house and went outside to fetch a bucket and mop. When she walked out, the owner's dog, which had been sleeping at the door, suddenly lunged at her and bit her hand. She describes that she had to "beat it till it let her go."

Thelma sustained injuries on her arm and profuse bleeding. She developed what she described as “life scars.” She asked her employers to take her to the hospital because the dog had not been vaccinated. Her employer refused saying that the injuries were minor and did not require urgent medical attention. She then left her workplace and walked to a nearby government clinic for treatment, where an injection was administered and a course of medication begun to prevent rabies. She had to go to the clinic every day for five consecutive days for an injection and for her wounds to be dressed. The employer did not offer to pay for her medication, and she received basic medication and treatment from the public-health service provider.

In 2013, the same dog bit her again, this time more severely, nearly resulting in her thumb being severed. The bite exposed the white flesh of her arms. She lay down screaming while the dog mauled her, and the employer had to intervene by beating the dog until it let her go. This time the employer took her to the hospital; her wounds required six stitches. However, the dog had still not been immunized against rabies. She was rushed to a public hospital and her employers paid for her injection on that day. At the request of her employer, she agreed to tell the hospital personnel that she had been bitten by a stray dog and not her employer’s dog, which according to the law, would have been confiscated by the authorities.

To her, this incident demonstrated that her employer was more concerned about his dog than her well-being. She agreed to lie because that meant keeping her job, her only source of income. She said: “I loved my job. ... This was my last hope ... so I had to lie.” The employer reciprocated by offering to accompany her to the hospital for daily consultations and treatment although he did not pay for the remaining medical costs she incurred. As a result, she had to pay 1,000 rand a day to receive the necessary treatment because authorities from the public hospital insisted that she pay as she was a foreign national.

Thelma has in her possession the medical reports and letters documenting her injuries and the prescribed treatment.

Subsequently, Ishmael lost his source of income and decided to let her go. He developed animosity toward Thelma. Ironically, while he declared bankruptcy, he accused Thelma of stealing a safe holding 74,000 rand and jewelry. He reported the theft to the police, who undertook an investigation but found Thelma her not guilty of the allegations. The matter was never pursued beyond calling her for questioning.

A few months after the second dog bite and theft allegations, Thelma’s employer dismissed her for reasons of financial distress. At the time of her dismissal, she was not aware of any recourse available to her as a domestic worker, in general or as an immigrant. She later became aware of her workplace rights through a training workshop she attended that was convened by the Chris Hani Institute (CHI) and Development Institute for Training, Support and Education for Labor (DITSELA) in December 2014. In this workshop, she learned about basic labor rights as provided by the BCEA and institutions that handle labor-related disputes, such as the CCMA and the Labor Department, where workers, including foreign nationals, can report workplace-related disputes. However, she was no longer able to refer her dismissal to CCMA in accordance with the provisions and time limits for reporting labor disputes. The permanent dog bite scars could serve as evidence to open a case against her previous employer although it would be difficult to pursue the dismissal case.

Background

Mary is 53-year-old South African woman and has worked as domestic worker since 1979. She only attended primary school and is currently attending ABET school with the hope of empowering herself and exiting domestic work for office work. She is married and has five children and two other dependents from extended family. Mary says that she is a very loyal domestic worker although her employer is abusive. She has worked for her current employer for 11 years, enduring a very hostile relationship with her employer. She said she never signed an employment contract and fears losing her benefits if she leaves, which she plans to do once she completes high school. According to her, the employer is very rude, always shouts at her and even throws food or other things into her face. On occasion, the employer accuses her of bringing "muthi," or witchcraft, into the house and refuses to eat food that she cooks. Conversely, Mary is also suspicious of her employer and sometimes does not eat the food offered to her.

Employer Background

Mary's employer is a 64-year-old woman. Mary describes her as hostile toward her, especially when drunk. When asked why she still works for her, Mary cites a lack of accommodation as she never managed to buy her own house. Mary lives in the backyard cottage at her employer's house together with her husband and young daughter, who is in Grade 10. While Mary views her employer as abusive, she does pay Mary a wage that is above the gazetted minimum wage for domestic workers.

Interview

One day, Mary went outside of her employer's gate to take out the trash when the employer's neighbor's dog charged and bit her. Mary screamed as the dog attacked and was rescued by the neighbor's domestic worker. The dog bite was deep into her thigh.

Her employer took her to a clinic where she received the rabies vaccine. She was then advised by the nurses to report her case to police. However, her employer discouraged her from reporting her neighbor and promised to follow up for compensation, which never materialized. Mary said she reminded her employer many times until when she gave up, as every time she raised the issue, the latter would shout at and threaten to fire her. Although Mary receives annual leave, she was not granted leave at the time she was bitten by the dog. The wound from the dog bite is a permanent scar, and every time she looks at it, she becomes depressed.

She finds comfort in her family, especially her husband who encourages her to forgive and forget and focus more on her education so that one day, she will be able to change her job. Mary believes that justice must be served and vowed to pursue her matter until she receives compensation. As a result, when she heard about SADSAWU, she wasted no time and joined the union.

Aside from the dog bite, Mary related that she suffers from a painful stiff spinal cord and arthritis due to the heavy household work she undertakes every day. This is coupled by stress and depression and, as such, she has developed high blood pressure and is on medication. She feels that she is treated like an animal.

SARAH

Occupational Injury or Disease: Fractured knee

Participant background

Sarah fell from steps when she was assisting in her employer's move to a new house. She injured her knee and reported that she could no longer kneel or bend. As a consequence, she limps and depends on medication and sleeping drugs, which she purchases at her own cost. Unfortunately, due to time constraints, the researcher failed to reach out to her for a face-to-face interview as she was only available on weekends and public holidays. Nonetheless, Sarah provided photos of her injured knee through WhatsApp.



PEGGY

Occupational Injury or Disease: Skin damage on hands due to exposure to harmful chemicals while doing laundry for various households.

Participant background

Peggy is one of the many Zimbabwean women in South Africa who is wholly reliant on domestic work as her source of income. She is a migrant worker who followed her husband to South Africa in 2009 in search of better economic opportunities. Her husband works as a roof thatcher in the same area. Through her earnings, Peggy assists her husband in taking care of their only child and sending remittances to their extended family back home.

Interview

Since 2010, Peggy has worked for multiple households performing mostly housekeeping work that includes laundry. Currently, she is not employed on a permanent basis as she moves from one employer to another, undertaking piece work. Through her networks, she can obtain work on regular intervals in households in and around the area where she lives. She has never signed a contract with an employer. Her personal relationships with employers have been largely dependent on the employer's attitudes toward her rights and personal dignity. But she generally had a good relationship with her various employers until 2013, when she was employed for one household as a "permanent casual." At the time, she was paid a paltry 80 rand a day. She decided to approach her employer to request an increase to her wages. Her employer reacted harshly and dismissed her when she went on maternity leave. Since 2014, Peggy has been employed casually and has not been able to find stable and permanent employment.



Her housekeeping work often consisted of washing and ironing clothes, and cleaning the house until she developed skin irritation as a result excessive handling of detergents. In 2015, she first noticed a skin rash on her hands but did not determine the cause. She continued experiencing this skin irritation soon after washing and doing laundry. The irritation grew to become an open wound between the index and middle fingers on her right hand. It was then when she realized that the irritation was a result of the washing powder she had been using. She had also heard from other domestic workers who had suffered the same skin irritation while using certain types of washing powder.

Peggy asked her employer at the time to change the brand type of the washing powder, and the latter obliged by switching from Sunlight to MAQ washing powder. This made the wound even more painful and

sore. Every time she uses washing powder to do her own laundry, the wound widens, and she experiences an acute pain in her entire right hand and arm. As a result of the injury, Peggy can no longer engage in laundry washing to earn income, diminishing her chances of being employed as a domestic worker since most of her work has comprised cleaning and washing. Pursuant to the interview, the researchers followed up on her and she reported having sought free government medical treatment to her wound, which had shown no signs of healing.

Peggy is generally unaware of her rights as a domestic worker. She would like to see domestic workers being compensated for workplace injury. She was happy to learn that she can enter into a written employment contract as a domestic worker.

GERTRUDE

Occupational Injury or Disease: Shoulder and head injury

Participant background

This case raises the issue of domestic workers employed in resorts rather than private homes, and who are not excluded from COIDA. The interviewee works as a housekeeper at a private resort cleaning many chalets (where tourists on holidays stay within the resort).

The respondent approached the Department of Labor but was never assisted as she was advised to provide concrete evidence as per the statutory requirements of COIDA. The technical requirements were too onerous for her and prevented her from accessing her benefits.

Interview

Gertrude is permanently employed as a housekeeper at a golf estate, where she has worked for 10 years. In 2014, she and other workers were involved in an accident in the employer's vehicle on premises, when it came to a sudden halt. Gertrude, who was seated in the front seat, was thrown off her seat and into the dashboard of the car. She lost consciousness upon impact. When she woke up at the hospital, she was told that she had suffered a seizure. Further medical tests were administered, and the doctors diagnosed severe damage to her left ear as a result of the accident. She incurred significant medical expenses for her treatment. Even though the accident took place on company property and in her employer's vehicle, the company did not pay any costs related to the injury. Instead, her sister paid for the ambulance that took Gertrude from the accident scene to the hospital.

When paramedics arrived to attend to her, they were told that she had been injured because she had been "looking at giraffes," implying she was to blame for her injuries. At the hospital, the paramedics gave the same version of the story, and she later realized that the employer was not keen to accept responsibility or to cover expenses resulting from the incident. Gertrude spent almost a month in the hospital and was not paid sick leave. Upon her return to work, she still experiences some pain in her head and shoulders and regularly visits the doctor for treatment, at her own cost. Adding to her most recent traumatic experience is the fact that she does not have a good relationship with her employers. She is treated worse than prior to the incident. Her employers force her to work even when she is not feeling well and threaten her with dismissal every time she brings in a sick note from the hospital.

When the Department of Labor (on its own initiative) conducted an inspection and training at her workplace, Gertrude took advantage of the opportunity to ask if she was entitled to compensation for her injuries. The officials told her that she did qualify under COIDA and advised her to claim compensation by lodging an application at the local Labor Department office. When she did, she was advised to get medical scans for the

department to process her claim. This required her to pay 14,000 rand at the hospital for the scans—a price too steep. As a result, she was unable to continue her claim. Gertrude also believes that her employers and Labor Department officials colluded to stifle the process to claim compensation for her injury.

Gertrude said the process of lodging a COIDA claim is too costly and time-consuming. She suggested that some conditions be changed to make it easier for low-wage claimants to substantiate their claims, such as obtaining exorbitant medical scans. She earns only 4,000 rand a month, so the scans would have cost more than three months of salary.

MATILDA

Occupational Injury or Disease: Hit by golf cart, broken shoulder and socket joint

Participant background

Matilda is a 47-year-old South African woman working as a housekeeper at a resort. She has been there for 24 years and is the team leader of her department. Matilda is married and has four children; two are still attending school, one in college and the eldest unemployed. She reported having a good relationship with her employer, although she complained that her wages were low considering the number of years she has served. Her injury was as a result of negligence by a fellow trainee employee, who drove a golf cart over her.



Employer Background

Matilda's workplace is a large resort with hundreds of workers providing diverse services. The company has its own in-house medical practitioners, to whom injured or sick staff members are referred. While this is a good practice, according to two respondents who participated in this study, the doctors often dismiss cases of severe injuries as minor. This has deleterious effects on the victim's future access to medical care, including access to unemployment insurance and COIDA-related compensation, in the case of permanent disablement and permanent scars.

Interview

While Matilda is a permanent employee, she has never signed a contract; she was simply told she was a permanent worker. In December 2018, Matilda went to work as usual. As the team leader of housekeepers, she was driving a golf cart around the property, collecting dirty linen to take to the laundry room. While recharging her cart, a trainee employee came to recharge her cart as well. The young worker instructed Matilda to move aside as she wanted to recharge her cart first. Before Matilda could respond, the young lady threatened that she would force her way in if she were not given an opportunity as requested.

The next moment, the intern ran over Matilda and hit her on the right side of the shoulder, damaging tissue and bone. Matilda was advised by the human resources manager to write a certified affidavit and report the case to the police. The company first took Matilda to its in-house doctor, who advised she seek treatment at the hospital. X-rays revealed torn shoulder tissue. She received 12 stitches and required two surgical screws to stabilize her shoulder bones.³⁰ She underwent surgery and was hospitalized December 26 to 28, 2018. The company granted her six weeks sick leave to recuperate at home although no financial compensation was offered.

Her case was later referred to the Labor Department. The labor inspector declared Matilda's case to be minor, resulting in partial disability, and undeserving of financial compensation. For her medical review in February 2019, Matilda consulted an independent doctor who said she would suffer chronic pain on her shoulder and recommended ongoing medical care. Nonetheless, the employer said that her file had already been closed by the Department of Labor and it was not responsible for future medical costs. Matilda had to pay 400 rand for an X-ray and another 8,000 rand to the employer's doctor for further surgery.

Matilda says she was taken from "pillar to post" until the Department of Labor declared that she go for a review after six months. However, the employer refused to re-open her file. Meanwhile, one medical doctor diagnosed Matilda's injury as chronic, and she is dependent on pain killers. Sometimes, she feels sick because of the pain and fails to go to work; if she fails to produce doctor's note, she is regarded as absent. While the doctor also recommended redeployment so she could engage in light duties, management still expects her to continue her heavy workload although her fellow colleagues do understand and empathize with her.

While she is a dues-paying union member and attends membership meetings, the union did not assist with her case. According to Matilda, the union only talks about wages and not health and safety issues. Furthermore, she is not familiar with any organization that assists housekeepers or domestic workers. The company's human resources department refers her to the Labor Department, but the latter informed her that they need to send her file to Polokwane then back to Pretoria for review.

Matilda believes that the company doctors are no longer interested in assisting her although she experiences excessive pain and needs constant review to check if the artificial screws are not misplaced.

ELLEN

Occupational Injury or Disease: Fractured elbow

Participant background

Ellen Chongo is a 36-year-old Zimbabwean woman who was working as a cleaner at a resort. In 2015, during one of the busy weekends, she was required to clean an entire guest house including the top shelves. She took one of the chairs and climbed on top of it to reach and clean the shelves. However, the chair broke, and she fell on top of an iron bar that struck her right elbow. She sustained a deep cut, which required four stitches, and a broken elbow.



Interview

Ellen did not have a contract. She reported having a very good relationship with her employer, who even paid for a very expensive City and Guilds course aimed at upgrading her to a beauty therapist after recognizing her talent. She received two consecutive *Worker of the Year* awards during her employment at the resort. She also had the opportunity to travel across the country to represent her company at various fora after she qualified for the beauty therapy course. She has never experienced any sexual harassment.

In 2014, Ellen joined a union for migrant workers with the hope of securing legal documents to work in the country and became the union's coordinator in her region. In December of that year, she attended a workshop organized by the Chris Hani Institute in partnership with DITSELA and SADSAWU. At this workshop, she learned about worker rights for the first time, and she took it upon herself to educate fellow

migrant workers, even though the local union to which she paid dues organizing at the resort did not assist her when she got injured.

When Ellen suffered her injury, she said workers were exposed to intense pressure to clean guest houses to accommodate an influx of weekend visitors. Ellen is very short, yet she was required to clean very high shelves, which were out of reach unless she steps on a chair or ladder. After her fall, the company referred her to its in-house doctor, who provided treatment and bandaged the bleeding elbow.

Despite excessive pain, she was granted only one day of sick leave and was expected to resume work the following day. She had no option but to report back to work as she feared losing her job. The doctor declared the injury to be minor, negating her right to claim compensation. However, according to her, this is a chronic injury: On cold days, especially in winter, her elbow swells and she suffers great pain. She also suspects this injury led to her developing a shoulder knot, which is detrimental to her full effectiveness in her new employment as a therapist. Her new job as a therapist involves the use of her elbows to massage clients. Sometimes, she says she runs “out of power” in her right arm and strongly feels this is linked to her injury.

Most of her friends and colleagues at work encouraged her to go to the Department of Labor and seek compensation. However, she said that made her “nervous and afraid of losing her job.” So, she decided to leave the job and go to another resort, where she is now working on her own as a therapist. She did not receive her full severance package after resigning and is pursuing that matter with her previous employer.

On the ground, in terms of research and data collection, there was a strong reluctance and fear among resort employees working as cleaners to discuss workplace injuries and illnesses with researchers for fear of reprisal.

TOM

Occupational Injury or Disease: Cut right palm with a roll (wood-cutting) machine

Participant background

Tom is a 55-year-old South African man who has been working at a resort as general hand in a workshop since 1987. He is married and supports a family of six children. In September 2015, he was in the workshop cutting wood using a roll machine³¹ to make doorframes and staircases for a house. He accidentally cut the palm of his right hand and lost four fingers. An ambulance was called to ferry him to the company’s referral private hospital, where his hand was temporarily bandaged before he underwent surgery to stitch together and re-attach the broken fingers. However, his hand is permanently disfigured and dysfunctional.

Employer Background

Tom’s employer is a tourist resort offering a wide range of accommodation and recreation options, and facilities for hosting large events. The resort employs hundreds of cleaners, general casual workers, gardeners/florists, housekeepers, handymen and other staff to keep the facility running.

Interview

In September 2015, Tom was in the workshop, cutting wood for doors and staircases for household use within the resort. He does not know what went wrong with the machine, but his right palm was sliced across from side to side. He lost at least a liter of blood, he said. After the injury, the employer called the ambulance, and he was bandaged and rushed to a private hospital. The employer did not pay for medical follow-ups or transport fares. The initial report provided by the human resources manager, read “Tom cut his hand.”

Tom was appalled at this description and told the doctor that, “I would not leave my house to come to work and cut my own hand.” The doctor acknowledged on the medical report that, “Tom was injured on duty.” He was subsequently granted three months of sick leave on full pay. Accordingly, he would be able to go to the Department of Labor and make an occupational injury compensation claim. He reported that his right arm is now permanently incapacitated /disfigured.

The Supplementary Report on Injury to Hand from the Department of Labor dated September 3, 2015, reports that his poor hand function would “not improve. Patient had ulnar nerve injury and a salvage procedure was performed to have some time to heal. Prognosis—Patient’s hand is just more than a paper weight. Prognosis is poor, and I do not think it will ever improve. Patient has arthritis of fingers 2-5. His thumb has some adduction but limited performance, joint of his fingers has some movement, but not all. Patient has limited right hand function—it can only FULFILL A SUPPORTING ROLE.”

According to the Department of Labor report, Tom is permanently disabled through the loss of full functionality of his right hand. Since this incident, he solely relies on his left hand, and at work he was reassigned to undertake lighter work as an administrator responsible for signing documents and recording inventory.

Tom takes chronic pain medication and has related issues concerning his injury. He has a four-year contract with his employer, but it is written in Afrikaans and he does not speak Afrikaans. He only signed the contract as a mandatory obligation, without full knowledge of what he was signing.

While he reported his injury to the Department of Labor within the 12-month period, as required by law, he has heard nothing about his claim. Tom is not a union member.

REBECCA

Occupational Injury or Disease: Fractured right leg

Participant background

Rebecca is from Zimbabwe. She lives with her children and works as a domestic worker for a medical doctor. She cleans a 10-room house every day and looks after pets, including dogs and cats. One day, while she was feeding the pets, she slipped and fell. The incident left her with a broken leg. She was admitted to the hospital for two weeks.

Despite her injury, Rebecca’s employer chastised her for being careless and never assisted with her bills, including hospital visits. Instead, she received support from work colleagues, family and personal friends while in the hospital. Rebecca was not granted sick leave and was required to work as soon as she was discharged, despite having only partially recuperated.

Rebecca, who feared losing her job because of her irregular migration status, did not report her workplace injury. Her colleague narrated her story to the researcher as she witnessed the incident and was responsible for transporting Rebecca to the hospital.

Participant background**Respondent: Buhle's Brother³²**

Buhle was a local domestic worker originally from Qunu, Eastern Cape. She migrated to Cape Town to seek employment as a domestic worker to financially support her five children and her younger brother. She started working for a family who abused Buhle emotionally and verbally, including shouting at her.

After working for many years, Buhle's contract was changed to part-time, and the employer evicted her from the home where she was residing. She struggled to find affordable accommodations and sought a place at a church that shelters homeless people because her wages were so poor.

However, with time, the employer took her back to take care of her three dogs. Although Buhle was reluctant to move back and live in, she had no option given her financial distress. Her employer continued to threaten that she could fire Buhle at any time. It became a daily routine until Buhle reached a point where she was emotionally and psychologically stressed. This was compounded by the fact that her wages were insufficient to support her family back home. Buhle was later hospitalized for emotional work-related stress. Her employer texted a message instructing her to come back to work immediately after hospitalization or else she could hire someone else. She neither bothered to visit her in hospital nor call her. Unfortunately, Buhle never came out of hospital and eventually died. According to her brother, the unbearable working conditions had caused his sister's death; and despite working for the employer for 15 years, nothing was offered to her beneficiaries as compensation. The employer failed to even contribute financially toward Buhle's funeral, nor did she pay sick leave or wages while Buhle was hospitalized.

Even though the brother felt that justice had to be administered, he told the researcher "it's okay" and that the family accepted what happened and had since "closed the chapter." He claimed that the wounds of losing his sister were gradually healing although he expressed sullenness throughout the interview.

Participant background

Nomzamo is a 44-year-old domestic worker from Cape Town. She worked for her former employer for four years as a live-in housekeeper before she was injured at work and subsequently dismissed. One night, the electricity failed while she was carrying a washing basket full of clothes up the stairs, and she fell. She said she rolled over and at one moment did not know what was happening, since it was dark everywhere and the electricity was off.

Nomzamo said she expected her employer to assist her but instead was insulted with name-calling like, "bastard." Her employer blamed her for negligence and told her that in future she should be more careful. After a week or so she started having severe backaches until she was struggling to stand up.

She currently suffers from a severe backache and a "stiff spinal cord" and works part-time jobs elsewhere. She can no longer perform labor intensive domestic work duties that require her to carry or lift heavy loads. She expressed her disappointment with the employer and is keen to pursue the matter in court if granted the opportunity to do so.

ABIGAIL**Occupational Injury or Disease: Labor complications and subsequent surgery****Participant background**

Abigail is a 39-year-old domestic worker from Zimbabwe. She came to South Africa in 2017 to join her husband and worked as a domestic worker in Cape Town before becoming pregnant. She fell sick at work and was rushed to hospital. Abigail reported that due to the heavy work she performed, she suffered complications in delivering her baby and had to undergo surgery. She worked excessively long hours and when Abigail requested fewer hours, her employer responded harshly and declared that she no longer needed a domestic worker.

Abigail was declared a permanent worker and had a verbal agreement with her employer that stipulated working conditions. However, at the time of dismissal, she did not have a signed contract. When she informed her employer about her operation, she was dismissed despite the verbal agreement that indicated that she was employed on a permanent basis. She even spelled out some of the contents of her contract, including leave and benefits such as uniforms. The employer offered to buy uniforms for her but later reneged on this after she fell ill. Abigail still believes that the surgery will leave a permanent mark on her body and, as such, she wants to be compensated. Moreover, it is now difficult for her to undertake any heavy work. She loathes bouncing back to the sector although at times she is forced by economic circumstances to search for “piece” jobs to subsidize family income.

According to Abigail, the employer was insensitive to her health problem. In fact, the employer told Abigail that her surgery had nothing to do with the work she performed as a domestic worker and so she could not financially compensate her. Abigail is not aware of her rights or any organization that could assist with handling her case. Because of the absence of knowledge of worker rights and due to her migration status, she did not report her case to CCMA. She was of the view that “those without papers” cannot be assisted at the CCMA. As a result, she preferred to ignore the case as she sought counselling from church and family members.

BULELWA**Occupational Injury or Disease: Head injury in a road accident****Participant background****Respondent: Bulelwa friend**

Bulelwa was involved in a road accident on her way to work. She was badly injured and was taken to the hospital and underwent surgery where she received 12 stitches in the head. Despite the injuries suffered, Bulelwa’s employer called only to demand that she should come back to work as soon as she recovered or else she could lose her job. So, out of fear of losing her job, she went back to work before she was fully recovered. Bulelwa declined a formal interview because she feared being fired. Bulelwa’s friend, who participated in the interview on her behalf, said that while Bulelwa kept her job, she regrets not presenting a claim to the Road Accident Fund (RAF) in Cape Town and is disappointed that her employer does not seem to care about her injury because Bulelwa was not injured while at work.

NOMONDE**Occupational Injury or Disease: Arthritis****Participant background****Respondent: Siphesihle, her daughter**

Domestic work constitutes an intergenerational career for many households. Historically, men from the same province migrated to cities like Johannesburg to work as laborers in gold mines, municipalities and manufacturing. At that time, access to the cities was permissible for purposes of work only. Women sought employment as domestic workers to allow them to live closer to their husbands.

Nomonde, who died in 2017 at the age of 81, had followed her husband to Johannesburg where she secured employment as a domestic worker. She and her husband had one daughter, Siphesihle, who they left behind to attend school in the former homeland town where she studied up to Grade 8. Nomonde worked for her “first and last” employer for 30 years before she passed on the “button” to her daughter after developing arthritis and a stiff back.



According to the daughter, her mother was a hard worker who would passionately undertake all household chores, including taking care of her employer’s children. The main cause of arthritis, as diagnosed by a doctor, was the intensive labor of hand-washing things. Arthritis is a disease that results from wear and tear of joints, including pain and inflammation, which could be exacerbated by injury or infection. According to the Arthritis Foundation, if the diseases is not detected and treated early, it can result in permanent damage to joints.

The paternalistic employment relationship that existed between Nomonde and her employer was so strong such that when she retired, the employer resolved to “adopt” Siphesihle to work for her. According to Siphesihle, this was as result of trust that was built between her mother and the employer over the years as the white employer did not trust any other domestic worker except her mother and members of her family. This was substantiated by the fact that two weeks before the interview, Siphesihle’s current employer, who is the son of her mother’s former employer, was robbed of his money in their house but was quick to vindicate Siphesihle even though she has access to the house at any time. Unlike her mother, Siphesihle preferred to live out of the employer’s house citing limited space and the need for some autonomy and independence to live with her boyfriend.

She said she wants to maintain the amicable employment relationship that exists between her and employer who is paying her a “fatty” check in comparison to what her fellow domestic workers earn. She reported that her current wage is 7,500 rand per month including a third cheque she receives annually in November. In addition, she also receives 1,000 rand extra per month to take care of her mother’s previous employer, who is now 91 years old and lives with her son. She received a total of 14,000 rand in 2017, a portion of which she used to renovate her deceased parents’ home.

FUNEKA

Occupational Injury or Disease: Chronic stomach ulcers

Participant background

Funeka worked as a domestic worker in Cape Town for 17 years. She worked for an Indian family who would not allow her to bring or cook any personal food in the house even though she lived with them. Funeka complained that she was allergic to some of the spices that were added to the food prepared by her employer, of which she had no option but to consume. Sometimes, she would force herself to live on bread and sour milk although these were restricted as the employer insisted on her dislike of foreign food stuffs in her refrigerator. Funeka complained of constipation and subsequently developed piles (hemorrhoids). She sought treatment at a public hospital and underwent minor surgery. Despite her health problems associated with food, she continued working to support her family (six dependents) as she was the sole breadwinner.

According to Funeka, she was very satisfied with her salary, which by then was pegged at 3,000 rand—almost twice the gazetted minimum wage at that time. She managed to build a very beautiful home and her family homestead stands out within her village as among the “middle class of the village.” She also managed to send her two children to school, one of whom is pursuing an honors degree at a local public university, with the support of the government’s National Student Financial Aid Scheme.

In 2016, she retired and migrated back to her home village. She received a send-off gratuity of 15,000 rand from her employer. This served as start-up capital for establishing an African clothing boutique specializing on Xhosa cultural clothing at one of the small shopping centers close to her village. She said that while the send-off package was quite satisfactory, she could not restore her health. The ulcers are chronic, and a public hospital doctor has recommended she undergo more surgery to remove the ulcers before they develop into cancerous tissues.

According to Funeka, she “might have to lose part of her stomach tissues in the surgery” and is reluctant to undergo the procedure. She believes that one day her ancestors will hear her prayers and heal this chronic health problem. Funeka is also reluctant to pursue this matter if given an opportunity in court. She said she needs to move on and pursuing a case would somehow “open up healed wounds.” She is also concerned about how she would be able to provide evidence that the chronic ulcers were triggered by the food she consumed at her previous employer’s workplace.

RODRIC

Occupational Injury or Disease: Hand/Grinder Injury

Participant background

Rodrick is a Malawian immigrant and his case is illustrative of the multifaceted nature and context surrounding domestic work.

Interview

Rodric was employed in February 2016. He worked as a caretaker, overseeing seven properties spread across several suburbs of Johannesburg until his dismissal in April 2018. His duties were not clearly defined but rather entailed a wide array of tasks in relation to overall management of the properties, which included cleaning, repairs, gardening and general maintenance.



In the absence of his employer, Rodric would assume administrative responsibilities over the houses collecting rental payments from tenants; making sure that the electricity and water bills were paid; performing general maintenance work; and attending to the persistent needs of the tenants. Rodric did all this work although he felt that some tasks did not fall within the scope of the work agreed to when he took the job. Within the duration of his employment, no formal written employment contract was executed between him and his employer.

While Rodric was employed as a caretaker, his employer registered a construction company through which Rodric would be contracted to provide services, as instructed by his employer, to a hotel and casino, including electrical work as Rodric is a trained electrician. Despite having to undertake myriad tasks, Rodric was paid a paltry monthly wage of 2,300 rand. In May 2017, the employer dismissed one of his employees, a plumber, and the task was added to Rodric’s responsibilities although he was not trained as a plumber.

Rodric's injury occurred in May 2016 when he was attending to a rental property in Johannesburg. He was using an electric grinder, with which he was not familiar, and he lost control of it and cut through his hand so that "all his fingers were left hanging loose." Paramedics administered first aid at the site before rushing him to the hospital, where his case was declared an emergency and a nurse cleaned and dressed his wounds. The doctor noticed that Rodric had been wearing a uniform with a company name on it and took the initiative to call Rodric's employer and notify him of the incident.

However, during the conversation between the doctor and Rodric's employer, the latter denied knowing Rodric and that he had ever worked for him. His employer later chastised Rodric for wanting to hold him liable for his injuries, saying that would mean having to part with a substantial amount of money.

Rodric was admitted to the hospital for three days after which he underwent surgery on his injured hand. His fingers were severed then later reconnected using wires, and he was advised to attend physiotherapy following his discharge. Rodric's wife would sometimes drive him to the hospital for therapy. The doctor advised that he undertake light work to keep the wires connecting his fingers intact. Rodric said his injury is permanent and he experiences pain each time it gets cold.

In April 2018, his employer suspended Rodric after accusing him of holding a grudge against him, continuously complaining about his hand and not performing his duties due to his disability. Rodric recalls a moment where he informed his employer's wife that he had been advised at the hospital to claim compensation from the Department of Labor. She reacted angrily and accused Rodric of wanting to "chow her husband's money."

Following his dismissal, Rodric approached SADSAWU to assist him. He was a union member and is now an active member of his branch. Rodric says that he is privileged to have joined a trade union because his employer thought he could just dismiss him without facing any consequences because he is a foreigner.

KARABO

Occupational Injury or Disease: Cardiac Condition and Pelvic Dislocation

Participant background

From 1992 to 2013, Karabo was employed as a domestic worker at a private household. Her employer relocated thrice to various residences during her employment, and she moved in with her as she provided accommodation. After 10 years of employment, she was able to acquire a house of her own in Soweto, where she currently lives with her four children.

During the time of her employment, she requested wage increases. Her employer did not always take kindly to these requests and often responded with racist epithets. For instance, she would say, "What do black people know about money?" and, "If you want money, you must go and ask Nelson Mandela."

In April 2013, while doing some laundry, her employer asked her to go buy some liquor. As Karabo descended the stairs of the flat, she accidentally missed a step, fell and rolled down two staircases until she hit the ground. A security guard and another tenant who witnessed her fall rushed to her aid and enquired whether she was fine. At that moment she did not feel any pain. Karabo "dusted herself off" and proceeded to buy the liquor as had been instructed by her employer. When Karabo returned and after finishing the last part of her laundry, she began to experience acute pains all over her body. She immediately reported the matter to her employer, who merely responded by saying, "Oh." From that time, Karabo began experiencing chest pains and persistently coughed blood. She also began limping and increasingly found it difficult to walk from the bus station to her workplace.

Karabo realized that she was coughing blood every morning since the incident and so she decided to consult a doctor at the nearby hospital. The doctors suspected she had contracted tuberculosis and administered a TB test. The results came back negative, but the pain and coughing persisted. When a second test was conducted on her and still came back negative, she explained to the doctor that she had previously fallen. The doctor was shocked and immediately called for an ambulance. She was rushed to Johannesburg General Hospital for immediate medical attention. An X-ray showed that she had suffered injuries on her heart and that her hipbone had dislodged from the pelvic bone.

Karabo was admitted at the hospital for a week while she received treatment and gradually recovered. When she was discharged, the doctor gave her a letter prescribing that she could not undertake heavy work. When she returned to work and handed the letter to her employer, the latter responded by saying, “Oh, so you can’t work now,” and dismissed her. Karabo describes the moment she was dismissed like being “chased away like a dog.”

She reported her case to the Department of Labor as she intended to claim UIF benefits and complain about her working conditions. The department assigned an inspector to investigate her complaint. When it seemed apparent that the inspector was reluctant to assist her, Karabo was advised by her trade union, SADSAWU, to refer the matter to the Department of Labor offices in Roodeport, where the union thought she could be better assisted. This time the Department of Labor claimed that she had been late in referring her matter and so claim would not be sanctioned. Since 2013, Karabo consults a doctor on a monthly basis for treatment. She has been responsible for all the medical costs arising from her injuries as well as transport costs for her regular visits to the hospital—two taxis twice a month. She still limps and experiences perpetual pain.

Karabo regularly attends meetings and training workshops facilitated by SADSAWU and reported that she has become aware of her rights as a domestic worker since the accident. Apart from the constant racial harassment she experienced, she had not experienced sexual harassment in her workplace. Karabo suspects that Department of Labor officials are taking bribes from the employers and are incapable of defending workers. She adds that the laws of the country are not effective in protecting the rights of workers in their workplaces.

Conclusion

The government's choice to exclude domestic workers from COIDA has privatized the cost of injury and illness so that they borne by the individual domestic worker rather than the collective fund, as in the case of other workers. Domestic workers should not have to seek recourse and compensation for occupational injuries and illnesses through legal action. Given extremely low wages and lack of awareness of their rights in this sector, a drawn-out, costly litigation process is untenable. As a case in point, the Mahlangu case was initiated in 2012 and appeared for the first time at Pretoria High Court in October 2018.

The subtext that emerges from these case studies is a lack of awareness of existing institutional power, worker rights, fear of authorities and disappointment at the response of employers who are often viewed as family-like or, in some areas, are in fact intergenerational, with domestic worker jobs remaining within the same family, passed down from mother to daughter. The narratives describe intimate relationships that are rife with contradiction: Employers who pay well above minimum wage, but nevertheless are also abusive, while others are considered benevolent, but do not recognize injuries at work. Similarly, while many domestic workers reported being disappointed by employer responses to injury, not only by failing to pay medical expenses or providing paid sick leave, but also by failing to show "care" and in many cases unfair and inhumane dismissal from the workplace "like a dog."

The case studies and analysis provided by this report illustrate that:

- Domestic workers as excluded from COIDA because they work in private homes are not excluded from a wide range of injuries at work, including but not limited to: injury from resisting home invasions and attempted rape; dog bites with debilitating consequences at the home of the employer or outside of it; falling from staircases or ladders while performing duties; skin damage from exposure to harmful household chemicals; or arthritis from years of repetitive intensive cleaning.
- Domestic workers covered by COIDA through employment by commercial enterprises cannot easily access the compensation to which they are legally entitled due to costs and other difficulties in proving their claims for injury and illness. For example, domestic workers injured in the course of employment by private resorts found that the costs of obtaining medical scans in order to make such a claim are prohibitive, and/or they are left in limbo by the Department of Labor, after making a complaint.
- Many domestic workers injured or sickened on the job face reprisals in the form of non-payment for sick leave and even dismissal in cases where permanent disabilities are incurred. In some cases, they face civil or criminal action on trumped-up charges such as theft, as revealed in the case of Thelma.
- Costs of injuries to the workers are not only the cost of medication and hospital care, but often temporary or even permanent physical disability or disfigurement, as well as psychological trauma.
- Compensation benefits for occupational injuries acts as an important socioeconomic safety net, the absence of which has potentially devastating consequences for domestic workers and their families.
- Domestic workers mistrust the institutions that are supposed to represent their interests—such as the Department of Labor—which workers perceive as working too closely with employers.

Since the completion of this study in 2018, the government published several draft amendments to COIDA to include workers providing paid domestic work in private homes, but the issue of retrospective

application has not been addressed in these draft amendments. On May 24, 2019, the Pretoria High Court ruled that the exclusion of domestic workers from COIDA is unconstitutional, but postponed the hearing on retrospective application of unconstitutionality, including whether the daughter of domestic worker Maria, who died at her employer's home, is entitled to claim compensation under COIDA.³³ The hearing on retrospective application of unconstitutional exclusion of domestic workers took place on October 17, 2019, and was granted pending "confirmation of the orders by the Constitutional Court."³⁴ Subsequently, domestic worker representative in this case, the SERI Law Clinic, filed an application for confirmation on the November 6, 2019, and the case is likely to be heard in early 2020.

Recommendations

Retrospective application of the COIDA amendment. Without retroactivity, domestic workers such as Maria and others interviewed will not be eligible for compensation for their injuries and illnesses. In view of the unreasonable and arguably unconstitutional delay in passing an amendment to COIDA to cover domestic workers employed in private homes, the amendment should allow for retrospective application of the Act, which was passed in 1993. Retroactivity is consistent with the South African Constitutional Court's doctrine of "objective invalidity," which holds that if a statute is unconstitutional, it has been unconstitutional since the adoption of the Constitution.

A public education campaign on domestic worker rights. Because law reform on its own is insufficient, a consolidated nationwide program to provide training on domestic workers' rights is essential. This is apparent from the fact that a majority of those interviewed were not aware of their rights.

Improved access to compensation under COIDA by low-income workers, including domestic workers. The claim system through COIDA must be reformed. Given the challenges reported by domestic workers already covered by COIDA in accessing compensation for workplace injury and disease—especially the cost of proving their claims—extending COIDA to privately employed domestic workers will not automatically give domestic workers better access to compensation.

A more effective inspection system. The Department of Labor must intensify its inspectorate services with specific reference to occupational injuries and diseases. Guidance can be taken from the 2018 recommendations of the Committee on Economic, Social and Cultural Rights that regular labor inspections should take place unannounced in domestic settings and that the government should ensure access to effective complaint mechanisms.³⁵

Promotion of contracts for domestic workers. Injuries occur in a wider context of informality and the almost complete absence of contracts of employment, which could regulate the issue of illness and injury and poor working conditions. Over 20 years, since the end of apartheid, domestic workers still live in "servant's quarters" or "backrooms" that foster paternalistic rather than contractual relationships.

Modernized Complaint Mechanisms. Given that domestic workers have had some success in empowering themselves through their various WhatsApp groups, social networks and associations to share and peer educate one another on vital work-related labor rights information, government might explore provision of digital tools to create a more effective complaint mechanism.

ENDNOTES

- 1 Business Insider, "Domestic Workers Can Now Claim Money for Injuries After Landmark Court Ruling," May 24, 2019 <https://www.businessinsider.co.za/domestic-workers-can-claim-money-for-injuries-after-landmark-high-court-ruling-against-coida-2019-5> (accessed on December 19, 2019.)
- 2 ILO, 2019 ILO Global Action Program on Migrant Domestic Workers ILO, "Domestic Workers," <https://www.ilo.org/global/topics/care-economy/domestic-workers/lang--en/index.htm> (accessed on December 19, 2019.)
- 3 Ibid.
- 4 Ibid.
- 5 De Villiers, B. & Taylor, M. (2019). Promoting a Positive Work Experience for South African Domestic Workers, *SA Journal of Human Resource Management/SA Tydskrif vir Menslikehulpbronnbestuur*, 17(0), a1206. <https://doi.org/10.4102/sajhrm.v17i0.1206> (accessed on December 19, 2019.) Also see Stats South Africa 2019.
- 6 ILO Social Security (Minimum Standards) Convention 102 of 1952, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312247 (accessed on December 19, 2019.)
- 7 ILO, "Ratifications of C189 - Domestic Workers Convention, 2011 (No. 189)," https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460 (accessed on December 19, 2019.)
- 8 Economic and Social Council, Concluding Observations on the Initial Report of South Africa, October 12, 2018, E/C.12/ZAF/CO/1 <http://www.un.org.za/committee-on-economic-social-and-cultural-rights-concluding-observations-on-the-initial-report-of-south-africa/> (accessed on December 19, 2019.)
- 9 Munakamwe, J. (2008). *Challenges in Organizing the Gendered Home-Based Care Workers in Post-Apartheid South Africa*. Unpublished thesis. Johannesburg: University of Witwatersrand.
- 10 Mid-Year Population Estimates, 2019 Statistics South Africa, <http://www.statssa.gov.za/publications/P0302/P03022019.pdf> (accessed on December 19, 2019.)
- 11 Paula England, "Emerging Theories of Care Work," (2005 Stanford University). <https://www.annualreviews.org/doi/10.1146/annurev.soc.31.041304.122317> (accessed on December 19, 2019.)
- 12 Ibid.
- 13 Cobble, Dorothy Sue, "The Prospects for Unionism in a Service Society in Sirianni, C," and C. MacDonald (eds.) *Working in a Service Society*, (1996, Philadelphia: Temple University Press).
- 14 Elson, D. and Cagatay, N., 2000, "The Social Content of Macro-Economic Policy," *Journal on World Development* 28 (7):1347-64.
- 15 Bakker, I., and Gill, S. (2003). 'Human In/security in the Global Political Economy' in "*Power, Production and Social Reproduction*." Palgrave Macmillan UK. DOI. 10.1057/9780230522404.
- 16 Unless the nature of the injury is serious or the worker is killed. It should be noted that police and military officers are covered by their own specific worker compensation funds, and independent contractors can often be described as employees or workers.
- 17 Paul Benjamin, "Informal Work and Labor Rights in South Africa," *Industrial Law Journal*, Vol. 29 (July 2008).
- 18 Ibid.
- 19 It is alleged that Maria, who was partially blind, was washing the top windows outside a bedroom located next to the pool when she slipped from the step ladder on which she was standing and fell into the pool which was unfenced and uncovered at the time. Maria could not swim and drowned. Her body was discovered hours later by her employer, who had been present in the home at the time of the incident (see <https://www.seri-sa.org/index.php/latest-news/19-litigation/case-entries/846-mahlangu-coida-constitutional-challenge-sylvia-bongi-mahlangu-v-the-minister-of-labour> (accessed on December 19, 2019.)
- 20 <https://www.seri-sa.org/index.php/latest-news/19-litigation/case-entries/846-mahlangu-coida-constitutional-challenge-sylvia-bongi-mahlangu-v-the-minister-of-labour> (accessed on December 19, 2019.)
- 21 Kayoko Ueno, "Life Strategies of Women Working as Domestic Workers in Asia," 2011, Kyoto: Sekaishisoshia (in Japanese); Ueno, "Facebook Activism among Foreign Domestic Workers in Singapore," 2014, conference paper. International Sociological Association (ISA). Yokohama: Japan.
- 22 However, four research team members were included in the four ZEP groups and the lead researcher is also a member of the Domestic Warriors Group and Makhox Women's League. If we are to subtract their presence from the total; it would leave $(4 \times 4) + 2 = 18$ from 90, $794 = 90, 776$ independent participants. An invitation was also extended to other non-domestic worker WhatsApp groups, such as Solidarity Center (in South Africa), which was established in 2017 to coordinate a rapid assessment of mining communities in South Africa (15) and Sarrounia Mining Communities Affected Women's Group (20). In total, 90, 811 participants were included in the survey.
- 23 Number of participants (workers) who responded to our questionnaire, including those who were not available for face-to-face interviews = 60 and were drawn from the following: Izwi/ Izimbokodo Meeting (1/3/18) = 13 participants; SADSAWU Meeting (19/3/18) = 12; Bela Bela Meeting (27/3/18) = 18; Makhox WhatsApp = 15; the final two interviews took place at SADSAWU offices.
- 24 Interview with CCMA Commissioner (anonymous) based in Johannesburg, who is responsible for training domestic workers, March 24, 2018, CCMA Head Office, Johannesburg.
- 25 SADSAWU meeting with researcher, March 29, 2018, with union offices, Johannesburg.
- 26 ILO, "Who Are Domestic Workers," undated, https://www.ilo.org/global/topics/domestic-workers/WCMS_209773/lang--en/index.htm (accessed on December 19, 2019.)
- 27 The majority are migrant domestic workers.
- 28 Respondent elicited some signs of trauma and was referred to POWA for counselling services.
- 29 Interviewer's notes indicate that the narrative timeline is unclear.
- 30 Medical report provided.
- 31 A roll machine is used for cutting wood.
- 32 This is a secondary interview as Buhle died, her brother says, as a result of the psychological stress that was induced by an abusive employer.
- 33 Business Insider, "Domestic Workers Can Now Claim Money for Injuries After Landmark Court Ruling," May 24, 2019.
- 34 See Court Order attached— Appendix B.
- 35 Economic and Social Council, Concluding Observations on the Initial Report of South Africa, October 12, 2018. E/C.12/ZAF/CO/1



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