

Labour Migration in Africa: Migrant Domestic Workers in South Africa

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Abstract

Increasing membership in domestic workers' organizations and an effective usage of their bargaining power make positive changes through campaigns and existing dialogue with the government, but at the same time domestic workers remain the most vulnerable group of the labour force. Migrant domestic workers face even more challenges and are often exploited due to their irregular situation, they remain exposed to such violations as human trafficking, sexual abuse, forced labour, etc.

The Convention 189 has created a momentum for a change, hence, new ways to improve protection of labour rights and working conditions of domestic and migrant domestic workers. Such instruments as bilateral labour agreements between South Africa and neighbouring countries need to be revised and include provisions of cooperation between countries of origin and destination, mutual monitoring of the implementation and provision of adequate response to domestic workers' protection needs. Creation of the standards and regulation instruments has been an important step in ensuring decent work for migrant domestic workers, but the most important should be the enforcement of created tools in order to achieve concrete improvements in human and labour rights of domestic workers.

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Overview of labour migration trends

According to UN DESA, the number of migrants last year reached 232 million comparing to 175 million in 2000 and 154 million in 1990⁵⁸. The increasing trend in migration can be summarized by the main push and pull factors: on one hand - raising unemployment rate, poverty and income gaps, and unequal distribution of the population worldwide that stimulate migration and on another – raising educational standards, higher wages, improvement of social and labour protection systems in more developed countries that attract potential migrants. In case of South Africa, in particular, the average annual rate of change of international migrants over 2000-2013 has increased by more than 2 %⁵⁹. The trend of increasing migration to South Africa can be explained by greater work possibilities and higher economic development despite the world economic crisis that has severely influenced the country: in 2013 South Africa's economy was ranked 33rd in the world with a gross domestic product of 350,630 million of US dollars⁶⁰, leaving behind its neighbours in the region. Despite the relatively high unemployment rate⁶¹, mainly related to the structural market changes, South Africa attracts migrant workers by a number of jobs opportunities and higher wages. Needless to say that a global job crisis and deficit employment opportunities stimulate migration for work, but at the same time deteriorate a nature of jobs migrants normally undertake in countries of destination, as incoming workforce doesn't have a choice but to take less attractive jobs.

In consequence to the above mentioned trends, over the last years there is an increasing number of international migrant workers in the domestic sector. The ILO estimated that there are at least 52.6 million people⁶² who work as domestic workers around the world, which makes 4-10% of the workforce in developing countries and around 1-2.5% in developed countries⁶³. This trend is characterized by extensive feminization and increase of demand for domestic work. The overall estimate undercounts workers employed in the domestic sector due to the difficulties to capture an accurate data, however, one of the most recent assessments gives a global number close to 100 million domestic workers⁶⁴.

⁵⁸ Population Facts, No. 2013/2, United Nations Department of Economic and Social Affairs, Population Division, p.1

⁵⁹ *Ibid*, p.3

⁶⁰ World Bank database, Gross domestic product ranking

⁶¹ According to the ILO Unemployment rate per country in 2013: South Africa – 24.88%, Namibia – 16.92%, Botswana – 22.88%, Zimbabwe – 5.35%, Mozambique – 8.35%, Lesotho – 29.6% and Madagascar – 3.55

⁶² ILO in Action: Promoting Decent Work for Domestic Workers, INWORK Publication, ILO, Geneva, 2014, p.2

⁶³ Decent Work, Decent Life for Domestic Workers: An Action Guide, ITUC, 2010. p.15

⁶⁴ Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection, ILO, Geneva, 2013, p.19

Increasing number of migrant domestic workers is related to a series of global economic and demographic transformations. Thus, domestic work became an integral part of expanding global care economy, including not only such household chores as cooking or cleaning, but also child and aging population care as well as care for ill and disabled. Mainly it is related to an increase of women's labour force participation along with insufficient welfare state provisions. Moreover, in high-income countries we observe such demographic trends as low birth rate and rising number of aging population, which can be translated as unbalanced proportion of productive working population sustaining a large part of out of labour force population. This demographic phenomenon is also linked to differences between high and low income countries, which explains not only growing number of national domestic workers, but also increase in labour migration. Consequently, in developing countries domestic worker employment constitutes between 4 and 10 % of total employment and in post-industrialised countries – at least 2.5 %⁶⁵. There are also proves of further expansion of the domestic work sector, despite the fact that it is often considered an informal sector. As an example, the Bureau of Labour Statistics of the United States estimates that demand for home and health care work will increase by 50 % in the period of 2008-2018 due to growing older population⁶⁶. In the industrialized countries of the global North, the care sector needs to increase by 79 % in order to meet a growing demand⁶⁷.

In most developing countries the increasing demand for domestic work is interlaced with insufficient state welfare provisions and emerging need for alternative provision of household services. Considering a significant poverty gap between rural and urban areas in developing countries, we observe a constant flow of migrant workers from poor rural areas who seek better job opportunities in big cities. This trend overlaps with the process of globalization and leads to upsurge of migrant workers' flow across national borders. The bright example of such processes is SADC (Southern African Development Community) region: apart from rural-urban migration within South Africa, there is also an influx of migrant workers from the neighbouring countries. Thus, transnational migrants coming from Lesotho, Zimbabwe and Mozambique constitute the largest number of migrant workers employed in domestic sector. Perceiving South Africa as an economic powerhouse of the region, migrant workers try to escape economic and political turmoil in their countries of origin.

⁶⁵ Contributions of migrant domestic workers to sustainable development, UN Women, 2013, p.9

⁶⁶ Unity for Dignity: Expanding the Rights to Organize to Include Human Rights at Work, Excluded Workers Congress, 2010, p.18

⁶⁷ Social Care of Older People and Demand for Migrant Workers, Isabel Shutes, Policy Primer of the Migration Observatory, University of Oxford, 2011, p.3

Exploitation and vulnerability of migrant domestic workers

Having traced a trend of increasing labour migration, it is necessary to highlight a migration pressures in Africa, particularly important due to the overall bulk of African migration. Within the African region it is estimated to be almost two third of the total migration flows⁶⁸. Therefore, a high number of migrants faces not only the shortage of employment opportunities or widening gap of income, but also challenges related to decent work conditions and risk of exploitation.

Domestic workers appear to be the most vulnerable group of labour migrants due to dominating informal practices as well as insufficient protection under national law of a country of destination. South Africa, as one of the largest receiving countries of migrant domestic workers in Sub-Saharan Africa, in this context remains in a meagre position when it comes to labour migration governance and struggles to find an adequate response to the high migrants' influx.

One of the important steps in ensuring decent work for domestic workers was an introduction of the Sectoral Determination No.7 in 2002 under the Basic Conditions of Employment Act (No. 75 of 1997), which established the main set of standards, including minimum wage, working conditions, overtime and leave pays. Ratification of the ILO Domestic Workers Convention 189 followed in 2013 and is currently in force, however, there are still challenges in the implementation and enforcement of the adopted tools.

Considering particularities of a domestic work sector and challenges of labour migration governance, it is important to acknowledge widespread violations of human and labour rights that migrant domestic workers face. Given that informal economy dominates employment of most of the countries of Sub-Saharan Africa⁶⁹, domestic workers become a part of informal sector due to the tight South African regulations on migration. As a result, migrant domestic workers become particularly vulnerable and exposed to violations. Being employed in a private household, they experience not only risk of violence, but also lower wages, lack of health insurance, excessive working hours and exploitation. Moreover, difficulty to regulate employment relations is often correlated with the fact that migrant domestic workers live-in: working and living in a private household, especially in cases related to care provision, implies close and very personal relations. The situation aggravates in case of irregular status of a migrant domestic worker, which puts him/her in a weak position when it comes to claiming labour rights.

⁶⁸ Protecting the rights of migrant domestic workers, Making Decent Work a Reality for Domestic Workers in Africa: a regional knowledge sharing forum, Briefing Note No.4, ILO, Dar es Salaam, Tanzania, 2013, p.2

⁶⁹ Domestic Workers: From Modern-Day Slavery to Equal Rights, Briefing No. 30, Decent Work – Decent Life, Solidar, 2011, p.6

Predominately, domestic workers are women, meaning they face discrimination and abuses on the gender basis, including physical and sexual exploitation, mistreat, forced labour, etc. Furthermore, female domestic workers, living in private households, are isolated from their families and support systems⁷⁰. These challenges overlap with an existing informality of the domestic work sector and inefficient regulations, which tend to be more restrictive than protective for domestic workers⁷¹.

An average hourly pay for a female worker in South Africa is generally lower comparing to the one of a male workers, according to the UNDP estimation⁷². Taking into account a gender segregation issue in South Africa and a gender pay gap, women become more vulnerable even though they might be more qualified.

In addition to mentioned above violations, verbal abuses are frequently reported, including inappropriate language, shouting and insults⁷³. Being excluded or having a lack of access to the local community, migrant domestic workers become isolated and, thus, unprotected. Lack of information and awareness of their rights contributes greatly to continuation of exploitations and mistreatments.

Social and economic importance of migrant domestic workers

An importance of domestic work is generally diminished, despite its increasing importance in the labour force of the countries of destination and economic support to the countries of origin.

In the country of destination migrant domestic workers contribute to the revitalization of the labour market. By providing a sustainable support to a household, they make possible to free up time for the household members to be actively involved in productive or leisure activities that enhance the social and economic well-being of the family⁷⁴. On a larger scale, receiving nation's government profits from reduction of the care service costs, foreseen for children, persons with disabilities and aging population, as those migrant domestic workers who undertake the caregivers duties are being paid from the income of their employers - households. Members of the family, being able to return to the labour market and delegate their household duties to domestic workers, are in their turn contributing to the economic development of the country. Furthermore, considering South Africa's requirement to have a standardized

⁷⁰ Moving towards Decent Work for Domestic Workers: An Overview of the ILO's Work, D'Souza, ILO Bureau for Gender Equality working paper 2/2010, Geneva, p.v

⁷¹ Action against sexual harassment at work, Haspels, N., Kasim, Z.M., ILO, Bangkok, 2001, p.56

⁷² The Gender Pay Gap over Women's Working Lifetime, One Pager Number 20, Poverty Centre, UNDP, 2006

⁷³ Female labour migrants and trafficking in women and children, ILO Series on Women and Migration, No.2, ILO, Geneva, 2002, p.23

⁷⁴ Domestic Workers Count Too: Implementing Protections for Domestic Workers, a briefing kit, UN Women, ITUC, 2013, p.50

employment contract for migrant workers, it is important to ensure public awareness of the trilateral benefits of such legal practices: domestic workers are under labour rights protection, their employers receive services that allow them to increase their economic or leisure activity and the state benefits from the consumption expenditures, payments to welfare funds, social security and taxes⁷⁵. Failure to ensure an adequate implementation of labour laws, regulations and standards leads to increase of the shadow economy as domestic work remains an informal sector.

The origin countries benefit significantly from the economic and social remittances. According to UN Women report on Migration, Remittances and Gender-Responsive Local Development in Africa, women migrant workers are typically saving and send back home a greater share of their earnings than men and are more likely to invest in schools, hospitals and local development through migrants' and diaspora networks⁷⁶. IOM Sub-African regional estimate of remittances, in line with general sample of migrant women, estimates 79 % of African women sending money back home on a regular basis – generally a higher proportion of the income, even if generally earning less than men⁷⁷. In Sub-African context this trend can be explained by a traditional gender role women take in a family, meaning they become a subject of a pressure from to remit and support their families back home⁷⁸. Having a strong sense of responsibility to sustain the family, women tend to accept difficult working and living conditions. On another note, regardless who is remitting, women are commonly the main recipients as, due to their role in a family, they are perceived as better managers, investing not in themselves, but in children, household or community wellbeing⁷⁹. As a result, in Lesotho over 95% of the households with male migrant members, typically working on mines in South Africa, and 90% with female migrant members, half of whom working as domestic workers in South Africa, list remittances as a source of household income. Remittances are estimated to be around 25% of Lesotho's GDP, however, they are not used on luxury consumption or as an S&M investment, but mostly as a necessary income to meet the households' subsistence needs. The same figures – close to 90% - in Swaziland and Zimbabwe show a great significance of migrant remittances to basic needs and household subsistence⁸⁰.

Even though the social value of domestic workers is hard to measure, by exempting women from the household duties they provide an important live-in support to families. At the same time, domestic work sometimes perceived as a reaffirmation of

⁷⁵ *Ibid*, p.51

⁷⁶ Migration, Remittances and Gender-Responsive Local Development, UN Women and UNDP, 2010, p.14

⁷⁷ Gender, Migration and Remittances, IOM, Geneva, 2011, p.5

⁷⁸ *Ibid*, p.2

⁷⁹ Migration, Remittances and Gender-Responsive Local Development, *Op.cit.*, pp. 14-15

⁸⁰ Migration, Remittances and "Development" in Lesotho, Jonathan Crush, Southern African Migration Programme, Cape Town, 2010, p.52-57

class-based society or a deteriorating effect on gender equality⁸¹ and this is valuable argument in the debate for decent work for migrant domestic workers, as only through insuring adequate working conditions and labour rights it is possible to have a suitable protection of workers' rights as well as push forward for the formalization of domestic work sector.

Protection mechanisms for migrant domestic workers in South Africa: good practices and challenges

In South Africa, domestic workers rights are protected by the Sectoral Determination of 2002 of the Basic Conditions of Employment Act No.75 of 1997, amended in 2005. The Sectoral Determination establishes minimum wage, and specifies working conditions such as hours of work, overtime pay, salary increases, deductions, annual and sick leave. According to the UN Women report, the establishment of a minimum wage did not result in a decrease in demand for domestic work, neither in an increase of unemployment. Thus, in South Africa, the increase of average wage paid to domestic workers has not resulted in any significant employment loss⁸². In addition, maximum working hours preview that domestic workers have no more than 45 hours per week and their minimum age should be 15 years old, which implies that employers are obliged to verify domestic workers' age by requesting an identity document or birth certificate⁸³. Another important achievement in South Africa, often used as an example of good practices in the region, is introduction of standard employment contract that outlines terms and conditions of work for domestic workers. It includes a detailed description of the type of work and duties, working hours and leave days, rate of overtime pay, wage and method of payment, deductions and conditions to terminate the contract. Having undertaken an important step in legal provision of decent work for domestic workers, protection of migrant domestic workers remains an important issue, despite the fact that South African legislation foresees the possibility of obtaining a work permit for the purpose of domestic work. Tightening regulations the immigration policy becomes more selective and restrictive. Migrant domestic workers, mainly from the neighbouring countries such as Lesotho, Zimbabwe and Namibia⁸⁴, tend to enter South Africa with short-term visitors visas and overstay, becoming irregular migrant workers. In these cases, the government of South Africa has to deal with, often unexpected, social costs, namely increase of illegal recruitment, lowering labour standards, expansion of irregularity, human rights violations, etc.

Social protection policies for domestic workers also include the Unemployment Insurance Amendment Act (2003) and the Domestic Works Skills Development

⁸¹ Contributions of Migrant Domestic Workers to Sustainable Development, *Op.cit.*, p.33

⁸² *Ibid*, p.17

⁸³ Domestic Workers Count Too: Implementing Protections for Domestic Workers, *Op.cit.*, p.39

⁸⁴ *Ibid*, p.39

Project⁸⁵. The Unemployment Insurance Amendment Act previews 1% of the monthly salary contribution to the Unemployment Insurance Fund and consequently provides a support to those domestic workers who become unemployed because of illness, dismissal or retrenchment. It also covers maternity benefits, depending on contributions of domestic workers. As for the Domestic Workers Skills Development Project, it previews training and competency attaining events that provide nationally recognized qualification standards for domestic workers. Even though the social protection policies, as well as the Labour Relations Act, cover all domestic workers regardless their migrant status, it is evident that only those migrant domestic workers have an access to social protection benefits in case they have a regular status in South Africa.

ILO response to migration of domestic workers

Labour migration is not only an integral part of the ILO global agenda, but is also an important issue of its Decent Work Agenda. Among important instruments, introduced by the ILO, there are Migration for Employment Convention No.97 and Convention on Migrant Workers No.143. However, an important step towards insurance of labour rights and adequate working conditions for migrant domestic workers was made with on September 2013 when the Convention Concerning Decent Work for Domestic Workers No.189 came into legal force.

Recognizing domestic work as a regular work gives domestic and migrant domestic workers the same rights as for representatives of any other profession. South Africa has been one of the first countries to ratify the Convention 189 and now undertakes further steps to move from paper to practice. The government ensures a constant monitoring of the domestic workers treatment and provides human and financial resource. Accordingly, labour inspectors are being trained to monitor homes-workplaces for the domestic workers and to verify compliance of individual households not breaking their privacy at the same time⁸⁶.

Important role in the implementation of the Convention 189 in South Africa plays the Global Action Programme on Migrant Domestic Workers and Their Families⁸⁷, funded by the EU and implemented by the ILO. By providing constant consultancy assistance, the Programme not only promotes human and labour rights of migrant domestic workers, but also provides an important liaison between the stakeholders: workers and employers organizations, government and civil society. The GAP concentrates mainly on the migration corridor Zimbabwe/Lesotho – South Africa and

⁸⁵ Legal Protection for Migrant Domestic Workers, *Op.cit.*, pp. 131-238

⁸⁶ Domestic Workers Count Too: Implementing Protections for Domestic Workers, *Op.cit.*, p.40

⁸⁷ Global Action Programme on Migrant Domestic Workers and Their Families, ILO, project description - http://www.ilo.org/global/topics/labour-migration/projects/WCMS_222567/lang--en/index.htm

within its broader objectives provides a support in strengthening the capacity of trade unions and domestic workers organizations.

Domestic workers' movement

Domestic workers in South Africa are estimated to be 888,000 according the 2010 Labour Force Survey, which means they consist 7% of total formal employment⁸⁸. Increasing number of domestic workers for the past decades has led to strengthening the organization of workers' unions, such as South African Domestic Services and Allied Workers Union (SADSAWU).

This organization not only tackles the “invisible” problem of domestic and migrant domestic workers by empowering them and fighting for their rights, but also makes an important input into implementation of national labour legislation and international conventions. For instance, in consequence of proactive measures undertaken by SADSAWU, an issue of domestic work was put on the table in South Africa. In March 2012 the leaders of SADSAWU camped outside the South African parliament overnight demanding the ratification of the Convention 189. Having publically presented an open letter to the President's office, they have managed to attract attention of the media and civil society which has led to the cabinet's approval of the ratification later on that year⁸⁹.

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The Convention 189 has created a momentum for a change, hence, new ways to improve protection of labour rights and working conditions of domestic and migrant domestic workers. Such instruments as bilateral labour agreements between South Africa and neighbouring countries need to be revised and include provisions of cooperation between countries of origin and destination, mutual monitoring of the implementation and provision of adequate response to domestic workers' protection needs. Creation of the standards and regulation instruments has been an important step in ensuring decent work for migrant domestic workers, but the most important should be the enforcement of created tools in order to achieve concrete improvements in human and labour rights of domestic workers.

⁸⁸ You Know Your Rights: a basic guide for domestic workers in South Africa, Global Network Africa, LRS and SADSAWA, Labour Force Survey, 2010

⁸⁹ Claiming Rights. Domestic Workers' Movements and Global Advances for Labour Reform, Human Rights Watch, ITUC, IDWN, 2013, p.27

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