

How far have we come in Promoting Working Women's Rights to Gender Equality and Decent Work?

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Devalued, invisible, exploited and undermined – these are often the terms used to describe the situation of working women. Over the past few years we have seen a number of state led interventions aimed at changing the situation of working women in South Africa. This chapter provides a brief snapshot of some of the important developments that have taken place over the past few years and the challenges that continue to undermine women workers' right to decent work.

WOMEN AND ACCESS TO THE LABOUR MARKET

The 2015 Report on the Status of Women in the South African Economy indicates that even though women are overrepresented in the unemployed category with the unemployment rate for women estimated at 28.7% in 2015 compared to 24.4% for men, there are less discouraged women jobseekers when compared to men, signifying that more women than men are actively seeking employment (Republic of South Africa, 2015). There however remains a number of challenges women face in accessing the labour market including their historical disadvantage in relation to accessing skills, education and training, resources and networks. Anecdotal evidence from women involved in Labour Research Service (LRS) programmes points to the fact that employers continue to see childbearing as a negative interruption and are dissuaded from employing young women. Even though South Africa has labour laws protecting pregnant women, and the Labour Relations Act specifically mentions that an employer is not entitled to dismiss an employee due to her pregnancy, pregnant women still report cases of contracts being terminated.

Women also continue facing the consequences of gender norms and the unequal division of labour where women are primarily seen as caregivers within the family, while men are viewed as bread winners (Floro and Komatsu, 2011). In this caregiving role in the family women spend a disproportionate amount of time doing unpaid work as compared to men who spend more time in remunerative employment. According to the ILO (2016) report in 2015 South African women work on average 3.1 hours of unpaid labour while for men it is 1.1 hours.

SOUTH AFRICA ON THE POLICY STAGE

Internationally the South African Government has shown its commitment to achieving full gender equality by being part of the African countries who have adopted the African Union's Agenda 2063 and it is a signatory to the UN framework for Sustainable Development Goals (SDGs). Both frameworks commit to the achievement of full gender equality. As a signatory South Africa is obliged to implement appropriate programmes and interventions to achieve gender equality. The National Development Plan (NDP) finalised in 2012 serves as South Africa's vehicle for achieving the SDGs and identifies the active participation and empowerment of women as important in the transformation of the economy. The NDP makes the following recommendations:

- Public employment should have a specific focus on unemployed women
- The transformation of the economy should involve the active participation of women and the empowerment of women
- There should be support for women's leadership in all sectors of society
- Measures should be implemented for women to have access to basic services
- Women should have no fear of crime and should be protected by the law
- There should be nutrition intervention for pregnant women
- Women should have access to anti-retroviral treatment and effective routine micro-biocides

THE SITUATION OF DOMESTIC WORKERS

In South Africa the Domestic Workers' Act sets out minimum wages for domestic workers and specifies working conditions such as hours of work, overtime pay, salary increases, deductions, annual and sick leave. The Report on the Status of Women in the South African Economy estimates the number of domestic workers at 1 million and as the largest employment sector for black women (Republic of South Africa, 2015). In South Africa we have also been at the forefront of ensuring that domestic workers are covered with most of the core protections required by international standards with the amendment to the Labour Relations Act to accommodate Sectoral Determination 7 (SD7).

South Africa has ratified ILO Convention 189 setting labour standards for domestic workers. The recognition of domestic workers as employees means that domestic workers can access employee-related benefits and have some level of social security like other formally employed persons. Yet in South Africa domestic work is still accounted for as informal work as it is work taking place in private households with employers not obliged to provide benefits like medical aid or pension. We find almost 70% of domestic workers without formal contracts; and similar to experiences internationally besides being a highly feminised occupation, domestic work is also highly 'migrantised' (Dinkelman, Ranchhod, and Hofmeyer, 2014 and ILO, 2013). Many domestic workers in South Africa leave their homes or arrive from neighboring countries with the hope of creating a better life for themselves and their children, often as undocumented migrants - increasing their vulnerability to extreme exploitation.

Notwithstanding the implementation of SD7 the 1 million domestic workers in South Africa still face a lack of compliance with the labour standards set out in the sectoral determination and the lack of effective enforcement of labour standards on the part of the Department of Labour. Many domestic workers therefore continue to remain subject to exploitation and poor working conditions. It would also seem that the threat of punitive measures alone continues to be insufficient when responding to employer indifference or resistance.

A 2009 International Organization for Migration (IOM) Regional Office for Southern Africa report highlights a very disturbing phenomenon of young women being recruited into domestic work by highly organised operations that involve trafficking for labour exploitative purposes (Gauer Bermudez, 2009). Adolescent girls and young women are the main targets. Many of these young women are subject to physical or sexual abuse at the hands of their employers and even if they are able to leave these unfavourable conditions as a domestic worker, they often do not have the resources to return home or are afraid to return without having earned any money; they are then befriended by pimps and groomed for sex work, demonstrating a link between the trafficking of persons for labour exploitation and commercial sexual exploitation.

THE SITUATION OF WOMEN IN THE INFORMAL ECONOMY

According to the Quarterly Labor Force Survey in the first quarter of 2012 there were 2.1 million people in South Africa active in the informal economy (excluding the agricultural sector) (Statistics South Africa, 2012). Excluding domestic workers, of the 2.1 million, 1.2 million were men and just over 857,000 women. Informal economy workers include street vendors, taxi drivers, rubbish collectors and home-based care workers. Women occupy the low-income, low skills occupations largely in street trading, spaza shops, dressmaking, early childhood development centres and hairdressing (Mathebula and Motsoeneng, 2015).

The South African Local Economic Development Network (LED) identifies a lack of an appropriate legislative and regulatory framework in the informal economy where local governments treat informal economy participants largely on the basis of by-law formulation and marginalise the informal economy within official economic development. This lack of appropriate legal frameworks exposes women to all manner of abuses, particularly from law enforcement agencies and officials who show little or no concern for the very laws they are supposed to uphold. This is expressed in various ways including police brutality, corruption and double taxation (Njenga and Ng'ambi, 2012). Women in the informal economy also often raise issues of sexual harassment from both government and customs officials, but are unlikely to report the cases of sexual harassment for fear of being further victimised (ibid.).

Access to education, lifelong learning and skills development would go a long way in addressing the relatively low levels of formal education and business literacy among women in the informal economy, and would assist women in challenging the perception that they are a high-risk group for credit, making it difficult to raise capital for their businesses.

Many informal economy workers work under very unfavourable conditions with no proper infrastructure. Women in particular often bring their children along to work with them in conditions where there are no proper shelters, or where no proper toilets, water or garbage collection points exist. Addressing these unsafe and unhealthy working conditions is essential for decent work to prevail.

As informal economy workers, women's family responsibilities limit the types of activities and amount of time they can spend on their paid business activities and the provision of childcare facilities can play an essential role in expanding employment opportunities. The importance of childcare for workers with family responsibilities is clearly recognised in the ILO Workers with Family Responsibilities Convention, 1981 (No. 156), and Recommendation No. 165, which calls upon all member states to take measures to develop or promote community services, public or private, such as childcare and family services and facilities (Article 5). To address the gender dimension of informality, policy responses, programmes and projects need to recognise that providing childcare is a basic necessity for expanding women's employment opportunities and enabling them to shift from informal economy activity to formal economic activity (Cassirer and Addati, undated).

The difficulties of organising informal economy workers, including engaging in traditional social dialogue and collective bargaining, where employment relationships are unclear remains a challenge. Women in the informal economy might also see trade unions as dominated by men who are not prepared to engage with women workers or who are too preoccupied with the formal workforce.

THE SITUATION OF WOMEN FARMWORKERS

In 2015 the ILO commissioned a detailed expert study of living and working conditions of farm workers in the country (Visser, 2015). The research highlighted how employers tend to pass on to farm workers the risk associated with the pressures they face, through increasing casualisation, externalisation and cost savings by employing off-farm workers. While farmworker employee sex disaggregated data is not readily available, international studies point to an increase in the number of women as seasonal, temporary and casual workers with no long term security, weak bargaining positions and little access to social security.

Using the 3rd Quarter 2014 statistics the ILO study on the working and living conditions of farmworkers highlights the abysmal levels of social protection farmworkers have with 5.6% of farmhands and labourers entitled to maternity benefits and 1.5% entitled to paternity leave. Only 20.6 per cent of farmhands and labourers received a contribution to pension or a retirement fund, 1.5 % received contributions to medical or health insurance and approximately two-thirds (67.1%) had deductions for UIF.

WHAT DOES THE MINIMUM WAGE MEAN FOR WORKING WOMEN?

In 2017 Cabinet approved the implementation of a national minimum wage which is to take effect in May 2018. At the end of a two year transition period the national minimum wage will come into full effect. The transition period makes provision for the ultra-low wage sectors of domestic work and agriculture to be included at lower tiers – 75% and 90% of the national level – for up to two years. In July 2019, these sectors will be included at the national level.

Many women workers are sole bread-winners and low wages keep both themselves and their families in poverty. What we will need to continue to assess is whether the present format of the national minimum wage will alleviate the increasing burden women experience in trying to keep themselves and their families out of poverty – this has particular relevance to women working in sectors like domestic work.

WOMEN AND OCCUPATIONAL HEALTH AND SAFETY

The Occupational Health and Safety Act (OHSA) was instituted in 1994 in South Africa. The OHSA lists workers' rights in health and safety in the workplace. While we have extensive Occupational Health and Safety (OHS) regulations for the traditionally high risk industries, there continues to be very little focus on addressing the specific needs of working women. Call centre workers for example, the majority of whom are women, speak of the psychological stress of dealing with abusive customers. Health care workers report high levels of anxiety and depression as a result of feeling constantly under threat from patients. Young women in the hospitality sector are particularly vulnerable to unwanted sexual attention and sexual harassment. Domestic workers are particularly vulnerable to abuse as they are relatively isolated in the households where they work and find it hard to report abuse and are seldom able to call on witnesses.

WOMEN AND WORKPLACE DISCRIMINATION

In South Africa there is a national political commitment to combat discrimination and promote equal treatment and opportunities at the workplace. Chapter 2 of the Employment Equity Act states that "no person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or on any other arbitrary ground" (Republic of South Africa, 1998). With the amendments to the Employment Equity Amendment Act (EE Act) coming into effect in 2014 the Commission for Conciliation, Mediation and Arbitration (CCMA) is now able to arbitrate in discrimination cases, replacing the more expensive Labour Court route. Soon after the amendments came into effect the CCMA director reported that in 2015 the number of discrimination cases being reported to the CCMA had doubled as compared to the previous year, and in most of the cases employees had won. Yet the percentage of discrimination cases being taken to the CCMA remains very low as many cases continue to go unreported because employees fear victimisation and potential loss of employment.

WOMEN'S ACCESS TO SOCIAL PROTECTION

South Africa's social protection policies are aimed at reducing vulnerability and assisting women to stabilise incomes in the event of unemployment, employment injury, disability, sickness and maternity, and by ensuring that they have at least a basic level of income security.

The Amendments to the Unemployment Insurance Agency (UIA) signed into effect on 18 January 2017 state that a beneficiary for maternity payment is an employed person who has been employed for at least 13 weeks. Another significant amendment is the shift from a sliding scale to a fixed rate of 66% payment of the earnings of the beneficiary at the date of the application. While these amendments make the UIA compliant with the ILO Maternity Protection Convention 183 (2000), article 16(1) of the 2014 SADC Protocol on Employment and Labour, and the 2007 Code on Social Security in the Southern African Development Community (SADC), there still remains the challenge of providing women with an unrestricted entitlement to maternity benefits (Olivier and Govindjee, 2015).

The UIA introduces a shorter and what appears as a reasonable qualifying period of 13 weeks, but a woman can only claim the maternity payment based on her acquisition of contribution credits i.e. the benefit is based on the number of days of work. There is therefore no minimum period of payment benefits if a woman has not accumulated enough credits, restricting entitlement to the contribution of the individual woman and not as part of a social contribution of all employed men and women. All unemployed women, women working in atypical forms of employment or in situations where employers are not compliant with the UIA remain excluded from any form of maternity protection. For maternity benefits to be an unrestricted right, and the extension of the benefits to unemployed women, continues to be a challenge.

When contributory schemes like unemployment insurance or maternity payment are linked to formal employment, women are less likely to benefit from these forms of social protection. Women are over-represented in the low skill, low paid, casual, temporary forms of employment and over represented in sectors like services that tend to be prone to more precarious forms of employment (Statistics South Africa, 2011). As women bear the overwhelming responsibility for unpaid work such as domestic work and care work, their patterns of employment are irregular and they are less likely to be covered by contributory social insurance schemes as compared to men. Employed women on average earn less than employed men resulting in lower levels of benefits. In 2003 South Africa extended unemployment benefits to domestic workers but to date very few employers are in compliance with this legal obligation.

The Child Support Grant of R350 per child reaches over 12 million children with the large majority of the recipients being women living in female headed households. The women receiving the grants are responsible for the food, shelter, clothing, education, health and other aspects of the child's maintenance – all unpaid care work. So while the Child Support Grant provides for the dependent children of people who are unable to support the child, it does not provide for the adults carrying out this support, the vast majority of whom are women. This leaves the caregiver with no means to support themselves (Beth, 2014). There remains a perception by many that the child support cash transfer is a social protection entitlement that women benefit from, and particularly young women continue to face criticism that they are lazy and misusing the grant, entrenching the perception that care work should be the unpaid responsibility of women. The challenge of recognising care work as equivalent to paid employment and establishing effective and safe care facilities remains a challenge.

A SMALL STEP FORWARD? HOW MANY MORE STEPS ARE NEEDED?

The challenges identified in the existing interventions are not easy to overcome and will require a consistent gendered analysis of the gaps in existing legislation and the challenges of enforcement. Overcoming the constraints women face in entering and participating in the labour market needs a concerted effort from all role players in challenging gender norms and power relations that continue to devalue women's contribution to society.

REFERENCES

- Bermudez Gauer, Laura (2009) "No Experience Necessary": *The Internal Trafficking of Persons in South Africa*, International Organization for Migration (IOM) Regional Office for Southern Africa Report (2009) http://pdf.usaid.gov/pdf_docs/Pnado562.pdf
- Cassirer, Naomi and Addati, Laura (date not stated) *Conditions of Work and Employment Opportunities, Expanding women's employment opportunities: Informal economy workers and the need for childcare* http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_145652.pdf (Accessed 26 February 2017)
- Dinkelman, Taryn; Ranchhod, Vimal and Hofmeyer, Clare (2014) *Enforcement and compliance: the case of minimum wages and mandatory contracts for domestic workers* <http://www.econ3x3.org/article/enforcement-and-compliance-case-minimum-wages-and-mandatory-contracts-domestic-workers> (Accessed 23 February 2017)
- Statistics South Africa (2011). Gender statistics in South Africa (2011) <http://www.statssa.gov.za/publications/Report-03-10-05/Report-03-10-052011.pdf> (Accessed 23 February 2017)
- Godblatt Beth (2014) *Social Security in South Africa - A gender and human rights analysis* https://www.academia.edu/6886959/Social_Security_in_South_Africa_-_A_gender_and_human_rights_analysis (Accessed 23 February 2017)
- ILO (2013) *Global Employment Trends* http://www.ilo.org/wcmsp5/groups/public/---dgreports/--dcomm/---publ/documents/publication/wcms_202326.pdf (Accessed 23 February 2017)
- ILO (2016) *Women at Work* http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/--publ/documents/publication/wcms_457317.pdf (Accessed 23 February 2017)
- Mathebula, Brian and Motsoeneng, Matshidiso (2015) *Patriarchy and the Informal Economy: The Case for Women Empowerment* <http://www.spii.org.za/wp-content/uploads/2015/06/Patriachy-Paper-Working-Paper-10.pdf> (Accessed 23 February 2017)
- Njenga, Miranda and Ng'ambi, Francis E (2012) *Women Working in the Informal Economy Challenges and Policy Considerations By Thembela* <http://www.osisa.org/sites/default/files/buwa-06-womenworkinginformaleconomy.pdf> (Accessed 24 February 2017)
- Olivier, MP and Govindjee, A (2015) *A Critique of the Unemployment Insurance Amendment Bill* <http://www.saflii.org/za/journals/PER/2015/57.pdf> (Accessed 26 February 2017)
- Republic of South Africa (2015) *The Report on the Status of Women in the South African Economy* http://www.gov.za/sites/www.gov.za/files/Status_of_women_in_SA_economy.pdf (Accessed 24 February 2017)
- Statistics South Africa, 2012. Quarterly Labor Force Survey www.statssa.gov.za/publications/P0211/P02114thQuarter2012.pdf

South African LED Network <http://led.co.za/topic/informal-economy> (Accessed 23 February 2017, site under maintenance presently)

Visser, Margaret and Ferrer, Stuart (2015) *Farm Workers' Living and Working Conditions in South Africa: key trends, emergent issues, and underlying and structural problems*. http://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_385959.pdf Accessed 26 February 2017

Republic of South Africa, 1992. Employment Equity Act [No. 55 of 1998] <http://www.labour.gov.za/DOL/downloads/legislation/acts/employment-equity/eegazette2015.pdf> Accessed 26 February 2017