

**IMPACT OF SECTORAL DETERMINATIONS IN
PREVIOUSLY UNREGULATED SECTORS:
A CASE STUDY OF DOMESTIC WORK IN GRAHAMSTOWN**

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ABSTRACT

Domestic labour is widely recognized as one of the most vulnerable labour sectors, both nationally and internationally. In South Africa, sectoral determination 7 was specifically developed to protect domestic workers' rights and provide them with the means to negotiate with and hold employers to account. However, research over the past years has demonstrated that, while some areas of domestic labour have improved, many workers are still locked in exploitative labour relationships. This research shows that it may seem as if there are significant changes in this sector since the introduction of the sectoral determination, but paternalistic orientations, one-of-the-family myths, and food distribution suggest otherwise. The research concluded that continuities of exploitative and discriminatory practices are still prominent in the employment relationship when viewed through the lens of paternalistic care, food distribution, and the 'one-of-the-family' myth.

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CHAPTER ONE

INTRODUCTION

Domestic work is defined as any labour performed in and for private households, and domestic workers as persons employed to perform this work, who receive or are 'entitled to receive' remuneration for their labour (Jacobs, Manicom & Durrheim, 2013). Domestic work is typically gendered, and is a major source of employment for women from marginalised and/or disadvantaged backgrounds (ILO, 2012). Globally there are an estimated 52.6 million domestic workers worldwide (ILO, 2012). In South Africa, domestic work continues to be one of the largest sources of employment for black women, making up 7.7% of total employment (Dalita, 2009). Put another way, domestic work provides employment for approximately 1 in 5 South African women (du Toit 2010).

Locally and globally, domestic work is generally perceived as being vulnerable and marginalised labour sector (ILO 2012). Domestic workers are often described as an invisible labour force, as their work occurs behind closed doors within a private space (Dalita, 2009). As such domestic workers' conditions of employment are characterised by low wages, long and irregular hours, tenuous employment security, discrimination and difficulty in enforcing employment benefits such as overtime, minimum wage, maternity leave etc. (Magwaza, 2008; Jacobs et al, 2013). The South African domestic labour sector is no different and this was largely shaped by the apartheid regime. Domestic work, under apartheid, was situated in a 'legal vacuum' (Cock, 1989: 6), as there were no laws to regulate working conditions or to protect domestic workers. As a result, hours were long and leave irregular (Cock 1989), and wages were not subject to rulings by the Wage Board and thus were 'notoriously bad' (Posel 1991: 173). Due to the lack of legal protection, domestic workers could be instantly dismissed at the employer's whim (Cock 1989).

Consequently, the first wave of literature on domestic work dealt with the oppression and exploitation of domestic workers under apartheid. The most prominent is Cock's (1989) seminal study *Maids and Madams*. Cock (1989) argued that black women were faced with triple oppression: they were oppressed as workers, as blacks and as women. She argued that the convergence of the systems of racial and sexual domination generated powerlessness and vulnerability of black women and ultimately framed the 'ultra-exploitability' of domestic

workers (Cock, 1989: 14). The exploitation that black maids experienced at the hands of their white madams was reflected in low wages, long working hours, and capricious and despotic treatment by employers (Dalita, 2009). Thus paid domestic work under apartheid was defined by the exploitative practices that ensured the subordination of the domestic workers, dehumanising racism and created a vulnerable labour force.

South Africa's transition to democracy after 1994 was accompanied by significant changes to the system of industrial relations and labour rights. For the first time in history, domestic workers were included in the definition of an 'employee' in the revised labour legislation and thereby granted the same rights and benefits as all other workers. This formalized the status of domestics as 'workers' (Dalita, 2009). Domestic workers were now covered by, amongst others, the Basic Conditions of Employment Act (BCEA) of 1997. The Act provided basic protection for employees in respect of conditions of work such as working hours, leave and dismissal (Budlender, 2010). The BCEA also empowers the Minister of Labour to make sectoral determinations, which primarily include provisions for minimum wages (section 51(1)). Before the Minister may make any sectoral determination for workers deemed 'vulnerable', an investigation must be conducted by the Employment Conditions Commission (section 51(1)). Following its investigation of the domestic worker sector, the ECC deemed workers in the domestic service sector to be vulnerable and highly exploited (Employment Conditions Commission Report: 2001).

Following the ECC's recommendations, the Minister issued sectoral determination seven (SD 7) on 1 November 2002. The determination included provisions on hours of work, formal contracts of employment, leave, severance pay, and pension contributions. Crucially, SD 7 introduced a national minimum wage in the sector. The Commission noted that the wage floor should improve the conditions of domestic workers while preventing job losses (ECC, 2002: 1). Contemporary literature on domestic work investigates the impact of formalising the sector and focusing on the impact of the minimum wage on the sector. There is a divide in literature on the effects of imposing a minimum wage.

The orthodox literature on minimum wages claims that there is an inverse relationship between minimum wages and employment; that is, the minimum wages invariably reduces employment (Adams and Moutos, 2006: 176). This inverse relationship can only be understood through the supply and demand model. This model posits that the imposition of a minimum wage will have a 'disemployment' effect (Butler, 2006; Bennett, 2002). A

minimum wage, according to orthodox economists, creates a disequilibrium in the labour market, which leads to a drop in employment levels, because the minimum wage is invariably set above the market-clearing level determined by the laws of supply and demand (Butler, 2006: 184). The employment level drops because employers cannot offer jobs at the minimum wage level and as a result fewer people are employed (Butler, 2006: 184). On the other hand, heterodox economists reject the claims of neoclassical orthodoxy by arguing that there is no real empirical evidence that higher wages produce unemployment (Card and Kruger, 1994: 792).

In South Africa, a growing body of research has found no negative employment effects associated with the introduction of minimum wages in the domestic service sector (Hertz, 2005; Bhorat et al., 2000, 2012; Grimshaw and Carroll, 2006). This research suggests that the textbook argument of a trade-off between minimum wages and employment does not necessarily and invariably hold (Bhorat, Kanbur and Mayet, 2012: 3). Bhorat and Mayet's (2013) study revealed that the introduction of the minimum wage has not had a negative effect on employment in the domestic worker sector. What did occur was an increase in the real wages after the introduction of minimum wage (Bhorat and Mayet, 2013: 6). In some cases, employers started to reduce the existing working hours in order to afford or to combat the high hourly rate (Bhorat and Mayet, 2013). This suggests that employers opted to reduce hours rather than employing fewer workers to deal with the impact of the minimum wage, which contradicts the predictions of orthodox economists.

The third wave of literature on the domestic worker sector is focused on tracing the improvements in the sector since the introduction of SD 7. Ally (2009) found that most workers expressed positive sentiments towards the statutory requirements for a fair dismissal, stating that the requirements provided job security. It was important to the workers that their employers could not dismiss them at whim (Dalita, 2009). Even though there have been positive effects of the SD 7 since its introduction in the sector, some scholars have argued that domestic workers are still trapped in exploitative working relationships. Contemporary scholars argue that the efforts of the democratic state to regulate and transform domestics from 'servants' to 'workers' has fallen short, in that these rights have served as improvements only on paper but in practice not much has changed (Ally, 2009; King, 2006; Fish, 2006).

Research shows that the limited effect of the SD 7 on the domestic labour sector is caused by a number of reasons. These reasons include indifference/resistance of the employer to

implement changes, limited knowledge by the domestic worker about their rights, fear of unemployment limit the domestic workers agency in enforcing or challenging employers and lastly private/hidden household workspaces are difficult to monitor (Jacobs et al, 2013; Fish 2006; Cock 1989; Magwaza; 2008). Ally (2009) and Jacobs et al (2013), have argued that the reason there has been a contradicting effect of the legislature on the sector is due to the intimate nature of the occupation. According to these scholars there are features of the domestic labour that are difficult to reach by way of worker rights. They argue that paternalistic relationships can have a limiting effect on workers ability to negotiate their rights, as fear of unemployment can.

These scholars claim that the affectionate bonds that develop between the employer and the domestic worker can undermine the ability of the domestic worker to recognise and challenge the exploitation from the employer. Many of domestic workers believe that they are an integral part of the families they work for and prefer not to enforce their legal rights in order to maintain these ‘personalize relations’ (Jacobs et al, 2013). Domestic workers only value these personal relations because of the ‘help’ that they receive from their employers. Challenging exploitation is thus hard to do as many domestic workers feel that they would come across as ungrateful to what the employers have done for them (Jacobs et al, 2013: 289). The gratitude and loyalty clouds the judgment of the domestic worker from acknowledging and challenging exploitation. In reality this ‘help somebody who helps you’ mentality serves to reinforce hierarchy, devalue domestic work and preserve an unequal working relationship structured by the colonial and apartheid servitude (Jacobs et al, 2013: 290). This is a major setback in a very progressive domestic labour legislation in South Africa.

Other setback that undermines the efforts of portraying domestic workers as agents who are in an equal working relationship is food. Archer (2011) argued that in post-apartheid South Africa, food is still a site of power and sometimes conflict. Her research on food does indicate that there are still practices within the distribution and production of food that are reminiscent to the apartheid practices (Archer, 2011: 80). Particularly the implicit rules that govern what kinds of food the domestic worker is permitted to have which is similar to that of ‘servant’s rations’ (Jacobs et al, 2013). The rules might not be as explicit as separating the domestic workers food from the family but it has the same discriminatory effect that perpetuates the idea that domestic workers are not accustomed to ‘luxury food’ and therefore should be given appropriate food fitting to them. These unspoken rules only indicate the

skewed power relations and inequalities within the relationship. Even though there are provisions in the SD 7 regarding food, these implicit rules regulate food distribution in the household. The common pattern here is that the legislation may have provisions that were specifically passed to address the social and historical context of domestic labour, but the problem is that these provisions fall short in the private homes of the employer. They fall short because domestic labour is still governed by ‘norms’ that were structured by colonial and apartheid servitude.

Thus, the aim of this research project is to investigate the impact of the sectoral determination on the domestic worker sector. Particularly looking at how the legislation has failed to address the inequalities that still exist between the domestic worker and the employer. Like Jacobs et al (2013) study, this research project looks to investigate how the paternalistic nature of domestic labour can limit workers ability to exercise their rights as much as fear of unemployment and limited of knowledge on rights can. The research project will also look into food and as the literature shows, food is a particular site of hierarchies of classification and power, and exploring the concept of food distribution between the domestic worker and employer will further determine whether the relationship between the employer and the domestic worker is still determined by norms and codes of apartheid era employment.

This research will also investigate whether familial relations exist between domestic workers and their employers. In particular focusing on the different understanding that domestic workers and employers have about what it means to be ‘a part of the family’ and how this familial extension can have a limiting effect on the ability of the domestic worker to exercise her rights. Lastly this research project looks to uncover the views of both the domestic worker and the employer on the effects of labour legislation on the sector. Particular looking at the perspectives of domestic workers on whether these provisions have made any significant changes to their conditions of employment as well as their relationship with their employers.

To achieve these objectives, the dissertation is organized into five chapters. Chapter two provides a review of the work that has been conducted on domestic service. Looking at the changes that have occurred in domestic service and outlining the transition of domestic workers from servants to workers. Chapter three will provide a discussion on the methodology that was used in this research. The chapter also discusses the difficulties encountered in accessing respondents. Chapter four discusses the main findings and concepts of the study. The chapter provides an analysis based on the interviews that were conducted

with domestic workers and employers. The chapter seeks to provide a descriptive understanding of the employment relationship between employer and domestic worker since the formalization of the sector and the effects of this formalization on the relationship itself. Chapter five concludes by discussing the theoretical conclusions, discussing whether there have been significant changes in the employment relationship since the introduction of the SD 7 and to see whether the domestic worker is truly an equal, independent agent that can challenge and negotiate her rights.

Domestic work is a vulnerable labour sector due to its invisible/intimate nature (work is performed behind closed doors and in private spaces). In effort to minimise this vulnerability and to make the sector more 'visible', the democratic state formalized the sector and in so doing recognized domestic work as 'work'. Regulating the sector however did not address the inherently unequal and exploitative relationship between the domestic worker and the employer. The chapter does hint that this is due to the invisible/intimate nature of domestic work, in that even though there is evidence that shows the improvements in the working conditions of domestic workers, certain constraints still persist, certain exploitative practices still persist and this is because of the occupations paternalistic nature. Thus this research seeks to investigate how this paternalistic nature of domestic work undermines the impact of SD 7. But first one needs to explore the nature and scope of domestic work in South Africa which is discussed extensively in chapter two.

CHAPTER TWO

DOMESTIC WORK – PAST AND PRESENT

2.1 INTRODUCTION

Domestic work in South Africa still remains the largest source of employment for a number of black and coloured women, making up 7.7% of total employment (Dalita, 2009: 2). Domestic work differs from other forms of employment in that the domestic worker works irregular hours, receives part of her payment ‘in kind’ and the ‘live-in’ domestic worker is accommodated at the workplace (Cock, 1989). The other significant difference is that domestic work involves the development of intimate emotional bonds (Ally, 2009: 13). This means that they have to actually care for the families whose households they maintained and love the children they take care of (Ally, 2009). Even though this type of intimacy can be found in other forms of care work, domestic workers do this work within the most intimate setting of private home’s and lives (Ally, 2009). It is this intimate relationship that has characterised the nature of the domestic work sector and has inspired many scholars to investigate this relationship.

Given the growing importance and relevance of this sector, much research has been conducted investigating the nature of domestic work in South Africa. The first wave of literature on domestic work focused on the inter-racial relationships between employers (white madams) and workers (black maids), and the exploitative practices of the employers. Contemporary literature still focuses on these racial inequalities but through the lens of a post-apartheid state (Ally, 2009; King, 2006; Fish, 2006). Contemporary scholars argue that the efforts of the democratic state to regulate and transform domestics from ‘servants’ to ‘workers’ has fallen short, in that these rights have served as improvements only on paper but in practice not much has change. This research uses the arguments of the contemporary scholars as a point of departure and aims to investigate whether this study will come to the same conclusion as these contemporary scholars. But before one discusses in detail the

seminal studies in the domestic worker sector, it is important to discuss the historical studies. Historical studies provide a useful understanding of the nature of development of the institution historically, pointing out its relations to ideologies of colonial servitude and its gendered/racialized construction as an occupation dominated by black people (Dalita, 2009; Cock, 1980).

2.2 HISTORICAL OVERVIEW OF DOMESTIC SERVICE IN SOUTH AFRICA: COLONIAL SERVITUDE

The process of colonialism in Southern Africa was initiated in 1652 when a great merchant corporation, the Dutch East India Company, established permanent settlement in the cape (Fage, 1968: 24). Initially the Dutch were concerned with providing their ships with fresh produce as they rounded the cape en route to spice- islands in Indonesia (Fage, 1968: 24). Over time the Cape became a settler colony and as such labour was needed to assist the settler farmers, as these farmers had become successful agricultural producers (Fage, 1968: 26). The labour comprise of the indigenous groups from the cape and imported slaves from Madagascar, Mozambique etc. In this way the Cape became a colonial slave society giving birth to colonial servitude.

Thus the Cape became not just a society in which some people were slaves, but a slave society where the institution of slavery touched every aspect of life (Hall, 1990). Slavery was central to the social, economic and legal institution of the cape (Hall, 1990). Slavery was also supported by the legal system which was Roman-Dutch law. The law defined a slave as property belonging to another human being. Because slaves were kept against their will, slave owners needed laws that would insure that slaves remained in their subordinate position (Hall, 1990). Thus slaves could be severely punished for acts such as running away or failing to obey their owner (Hall, 1990). The fact that slaves were black and owners were white illustrates that the colonial society was structured along racial lines, in which black people occupied subordinate position (Hall, 1990). This would later form the basis of apartheid servitude which will be discussed in the next section.

During this time slaves not only served as labourers on the farms, but as domestic servants to the settler families along the cape (Cock, 1980: 174). Early colonist preferred black slave

labour as it was cheaper and more controllable and some colonist felt that it was more fitting for slaves than free whites to do menial work (Gaitskel, Kimble, Maconachie and Unterhalter, 1984). The use of slaves as domestics was short lived as it was not politically tenable anymore and as a result domestic work transformed from a form of slavery to a form of wage labour marked by feudal relations (Ally, 2009: 24). This feudal relationship defined the employment relationship as 'master' and 'servant', the employer being the master and the domestic worker being the servant. This definition of the employment relationship was further instilled through the Master and Servant Act (No.30 of 1989) (Ally, 2009: 31). The Act was the earliest form of labour law and it was designed to regulate relations between employers and employees (Chanock, 2001: 424). It was introduced to bring together all labour, including coloureds and ex-slaves, under the same law (Chanock, 2001: 424). The basic aim of the Act was to make breach of contract of service criminally punishable. The Act defined the term 'servant' as any person employed for hire, wages, or other remuneration, to perform any handicraft or other bodily labour in agriculture or manufacture, or in domestic work or other occupation of that nature (Chanock, 2001: 425). Even though the Act was formulated as a safe guard of the equality of treatment of all races and all workers, the black employees or servants received the shorter end of the stick. Cases brought to the courts demonstrated the degree of coercion necessary to force and maintain the supply of domestic waged labour (Ally, 2009: 31)

The beginning of the nineteenth century marked the demographic transition from people of colour occupying domestic service to white women dominating the domestic service. This transition was a result of the increase in emigration from Britain to the Cape. Accustomed to servants in England, many of the settlers came with their own domestic servants who usually lacked education and alternative occupational opportunities (Cock, 1980; Ally, 2009). As such European women came to constitute a significant proportion of the domestic labour force in the Cape (Cock, 1980: 178). This demographic shift was also aided by the preference of the European settlers for white servant who were trained in their cultural tastes and white European women seeking an escape from the poor working conditions and limited occupational opportunities available to them in a highly class stratified Britain (Ally, 2009: 25).

Towards the end nineteenth century, the supply of white servants was rapidly decreasing and could not meet the growing demand of domestic labour in the Cape (Ally, 2009). This was because a significant number of immigrant servants married soon after arrival (Ally, 2009).

Another factor that made domestic work an undesirable occupation for white women immigrants was the poor accommodation and loneliness, and the difficulties of mixing black and white servants in a multi servant household (Ally, 2009: 26). As white immigrants moved out of domestic service, an important demographic shift was initiated. In the Cape, domestic service moved from an occupation dominated by white immigrant women to predominantly black women (Ally, 2009: 26). The dominance of black women in domestic labour was a clear intervention by the colonial state as an initiative to provide employers with cheap domestic labour. As such, in 1875 domestic service became the main source of employment for all groups of black women wage earners in Cape (Gaitskel *et al*, 1984).

In contrast to black women dominating domestic labour in the Cape, black men dominated domestic labour in Johannesburg and Natal (Van Onselen, 1982: 107). This was in response to the booming mining and the demand for reliable domestic servants. With the limited supply of white women, and limited black women urbanization to the mining areas around Johannesburg, the 'house boy' characterised domestic work in the Witwatersrand by the beginning of the twentieth century (Van Onselen, 1982: 107). These houseboys were praised for their capacity for hard work; quiet nature and willingness to learn (Dalita, 2009: 9). White households in the Witwatersrand area relied on these house boys for a variety of tasks, from washing laundry to cooking and cleaning (Ally, 2009: 28). The dominance of men in domestic work had come to an end and had given way to major shift in which black women came to dominate serving classes of Johannesburg (Ally, 2009: 28).

The 1930's marked this transition where black women came to predominate in domestic service. This demographic shift was a result of the gold rush where the mining industry was thriving and sought male labour for production (Ally, 2009: 32). Ultimately, the South African Native Affairs Commission sought to promote a class of black female domestics in order to release large numbers of men and boys for employment on mines (Ally, 2009: 32). Through this initiative by the state, many black women were urbanized (Ally, 2009: 32). This was a significant shift from the limited urbanization of black women in order to maintain the so-called native reserves (Ally, 2009: 29). The commission argued that black women's entry into domestic work would civilize them into more acceptable aesthetic taste of domesticity (Ally, 2009: 32). Some scholars argued that the entry of black women into urban wage labour reflected the choices of black women to escape the patriarchal relations of the country side and to seek economic independence for themselves and their children (Ally, 2009: 30). Others scholars, like Cock (1980), differ in that they believed that black women were coerced

into domestic work by the apartheid state, through restructuring paid domestic work as reserved for black women which would then ultimately trap these women in this type of employment.

2.3 APARTHEID AND MODERN SERVITUDE

With the urbanization of black female domestics, the apartheid state actively regulated the sector through a set of distinctively modern forms of labour control (Ally, 2009: 38). These laws sought to control the influx of black women into urban areas and also channelled black women into domestic service (Ally, 2009: 37). Labour bureaux remained the main feature of domestic service throughout the apartheid era operating as a mechanism of the state to distribute workers who came to these bureaux (Ally, 2009: 38). The extension of the pass law to black women meant to control the number of black women in urban areas and to make sure there was no over- supply of black women in these areas. In addition to having a pass, domestic workers were required to have a work permit to remain in a 'white area' (Ally, 2009: 39).

By the late 1970's, domestic work was a sector characterized with a web of legal requirements which structured a modern system of legislated coercion and control (Ally, 2009: 39). These extensive laws transformed the legal encoding of domestic 'servants' and recognized paid work as a form of modern servitude. But this was for the purpose of controlling the supply of domestic labour in white areas rather than protecting the domestic workers from exploitation (Ally, 2009: 39). It is this lack of legal protection that resulted in the exploitation of domestic workers. The apartheid state had successfully constructed the tie between urban residence for black women to employment. Ultimately because employment was necessary for legal residence and mobility, employers were given unique power by the state (Ally, 2009: 41). With black women desperate for economic dependence and wanting to provide for their families, many sought employment through the labour bureaux or were hired off the street by employers (Ally, 2009: 42). This dependence on the state and the employer for work gave a certain amount of power to not only the apartheid state but also it gave the employer power over the domestic worker.

With the extensive legislative network that controlled the movement of domestic workers rather than protecting, scholars such as Cock (1980) argued that domestic work existed in a "legal vacuum". A legal vacuum is a situation where there are no laws which address those particular circumstances (Cock, 1989: 6). In the case of domestic workers, there were no laws

stipulating the minimum wages, hours of work or conditions of service but only laws regulating the movement of domestic worker in urban white areas (Cock, 1989: 6). Due to the lack of legal protection, domestic workers could be instantly dismissed at the employer's whim (Jacob, Manicom and Durrheim, 2013: 275). For Cock (1989) the failure of protective legislature resulted in the exploitative practices of the employers. Ally (2009) on the other hand, argued that it was the complex legal network of state regulation for control that generated a unique type of dependency and exploitation for workers. For Ally (2009), the domestic workers dependence on the state and the employer for employment is what generated the exploitation of these individuals. This was because employment was necessary for legal residence and mobility, thus employers were given a unique power by the state. Exploitative relations of service were thus deepened by state-mandated dependence on employers (Ally, 2009: 41). Whether it was the lack of legal protection or the state generated dependence on employers for employment that led to the exploitation of domestic workers, the end result was the ill treatment and exploitation of domestic workers.

Evidently the colonial and the apartheid state had structured the demographic composition of domestic work. (Ally, 2009: 41). Structuring it as an occupation reserved for black women. Cock (1989) argued that reserving domestic work for black women led to what she called 'triple oppression'. She argued that domestic workers were oppressed as blacks, as women and as workers. The notion of triple oppression is complex and must not be understood as simply a convergence of three distinct types of oppression analysed in isolation, but these types of oppression must be analysed in relation to each other (Gaitskell et al, 1984: 87). Being oppressed as black derived largely from the system of racial domination to which black South African were subjected to (Cock, 1980: 232). This system was conceptualised to maintain black people in a subordinate position in all facets of life. The racial domination operated at five critical levels: political rights, property and residence rights, employment, education and income (Cock, 1980: 232). With limited political and property/residence rights, basic education and low income, black people were trapped in cycle of dependence on the state for employment. In this way the Apartheid state had successfully produced and maintained a reserve of cheap black labour for mining production and domestic service.

In addition to being oppressed as blacks, domestic workers were also oppressed as women. While both black and white women were subject to discrimination on the basis of sex, the system of racial domination provided white women with mechanism of escape from this oppression (Cock, 1980: 241). The apartheid state structured domestic service as an

occupation reserved for black women and as a result this perpetuated the idea of domestic service having a gender character: mostly done by women, black women. The tasks associated with domestic service- cooking, cleaning, washing, child care- have been universally assume to be ‘naturally’ part of a women’s sphere (Gaitskell et al, 1984: 87). In traditional African culture, young girls are taught that domestic work is the kind of work they ‘ought’ to be doing as women (Gaitskell et al, 1984: 88). Constructing domestic service as black women’s work limited alternative occupations that black women could occupy. This limitation was not only a result of the ideological construction of domestic service as women’s work, but also the states racial policy channelled black women into domestic service and systematically prevented black women form alternative forms of independent economic activity (Ally, 2009: 39). Lastly domestic workers were oppressed as workers. With limited legal protection and their economic dependence on the employer, this gave them no option but to reluctantly accept the low wages and appalling working conditions (Cock, 1989: 8).

Cock (1989) argued that the convergence of the system of racial and sexual domination generated powerlessness and vulnerability of black women and ultimately framed the “ultra-exploitability” of domestic workers (Cock, 1989: 14). The exploitation that black maids experienced at the hands of white women was reflected in low wages, extremely long working hours, and capricious and despotic treatment by employers (Dalita, 2009: 11). Cock’s (1989) study revealed that the wages of domestics were set unilaterally by the employer. For Cock (1989: 23), this demonstrated the vulnerability and powerlessness of the domestic worker. The madam set the terms of employment and the maid had to accept them (Whisson and Weil, 1971: 3). Remuneration for domestic work often combined cash and in-kind benefits (Dinkleman and Ranchhod, 2010: 8). Rex (1974) argued that a large part of the domestic’s real wage was provided in-kind in a form of benefits such as food, clothing, accommodation and transport during apartheid.

The live-in domestic worker was common during this time as legal accommodation was limited for ‘natives’ in Johannesburg (Dalita, 2009: 12). Thus domestic workers had no choice but to accept a live-in arrangement (Dalita, 2009: 12). The accommodation provided for the domestic was a basic one room structure in the employer’s back yard (Cock, 1989: 35). This one room structure contained a bed, chair and table and sometimes a shower. Cock (1989) argued that the employer used the living arrangements as a way of controlling ‘maid’, the employers would control the number of visitors that the domestic workers had and the

living arrangement meant that work never stopped because employers could call the domestic workers anytime when they needed them (Dalita, 2009: 12). The system of influx control made it difficult for domestic workers to change their place of employment if working conditions were bad, this effectively bound the domestic worker to the employer (Jacob et al, 2013: 275). In sum, paid domestic work under apartheid was defined by exploitative pay, oppressive working conditions and dehumanising racism and sexism (Jacob et al, 2013: 275).

From the above discussion it is clear that the relationship was characterised by racial and class inequalities, with comparatively affluent white women dominating poor black women (Dalita, 2009). Poverty, labour controls and the lack of alternative employment trapped a large number of black women in the domestic service sector (Cock, 1989). Consequently, black domestic workers serving white families came to represent an iconic image of apartheid's racial logics (Ally, 2009). Cock (1989) argued that paid domestic work reproduced the ideology of apartheid that constructed blacks as a servant class and instilled in white South Africans a belief of racial superiority, which was at the core of the exploitation of the black domestic worker. This racial domination meant that domestic workers were subjected to highly unequal power relations (Budlender, 2010). As such the domestic workers were not free and equal participants in the interaction, their interaction was shaped by the structures which controlled the distribution of power and resource in South Africa (Cock, 1980: 231).

Even though the literature portrayed domestic workers as passive victims to the exploitation from their employers, domestic workers were able to exercise their resistance in more covert ways, from stealing the positions of their employers to taking longer to finish chores (Cock, 1980). Ally (2009) argued that domestic workers strategically used the intimate nature of the job to independently control their work. The domestic worker used these personal relationships to negotiate working hours, remuneration and leave. The lack of labour rights forced domestics to find strategies for themselves that would help them deal with their own situations (Dalita, 2009: 13). The lack of citizenship of domestic workers during apartheid created a dependency on their employers and did not allow for the workers to be able to form collective and organise against their employers (Dalita, 2009: 13). However this did not mean that domestic workers did not have more forceful and overt forms of resistance. The South African Domestic Workers Union (SADWU) was launched in 1986 and still is the largest domestic workers union. The main aim of the union was, and still is, to bring

improvements in the relationship between workers and employers so as to be able to negotiate better working conditions (Ally, 2008: 5).

Through the discussion on the history of domestic work one can see how both the colonial and apartheid eras have constructed both the racial and gender component of this occupation. In white colonial society, the deepening of racial division made it more acceptable to have black men/women performing servant work than white women and as a result household-based domestic service became an all-black institution (Gaitskell et al, 1983: 88). The Apartheid state took this a step further by turning domestic work into a black women occupation through its labour control mechanism which were aimed at channelling black women into domestic work in order to free up black men so that they could work on mines. This was meant to keep black labour in subordinate position and to perpetuate black class as a serving class. Now the challenge in Post-Apartheid South Africa, with regards to domestic work, was to address not only the 'legal vacuum' in which domestic work was situated but also address the social and historical context of domestic labour (insure that the laws put in place would address the unequal power relations between domestic worker and employer).

2.4 DOMESTIC WORK IN POST-APARTHEID SOUTH AFRICA

South Africa's transition to democracy after 1994 was accompanied by significant changes to the system of industrial relations and labour rights. For the first time in history, domestic workers were included in the definition of an 'employee' in the revised labour legislation and thereby granted the same rights and benefits as all workers. This formalized the status of domestics as 'workers' (Dalita, 2009: 14). Domestic workers were now covered by, amongst others, the Basic Conditions of Employment Act (BCEA) of 1997. The Act provided basic protection for domestic workers in respect of conditions of work such as working hours, leave and dismissal (Budlender, 2010). However, due to problems with regulating domestic workers' conditions of employment under the general provisions of the BCEA, Sectoral Determination 7 was specifically enacted to regulate the minimum conditions of employment for domestic workers (Jacobs et al, 2013: 276). Before the Minister may make a sectoral determination for workers deemed 'vulnerable', an investigation must be conducted by the Employment Conditions Commission (ECC) (Budlender, 2010). Following its investigation of the domestic service sector, the ECC deemed workers in the sector to be vulnerable and highly exploited.

Following the ECC's recommendations, the Minister issued Sectoral Determination No. Seven (SD 7) on 1 November 2002. The definition of domestic workers in the determination includes gardeners, drivers and domestic workers employed in private households (Budlender, 2010). The determination includes provisions on hours of work, formal contracts of employment, leave, severance pay, and pension contributions (SD 7). SD 7 was specifically designed to bring domestic workers under the protection of the law and extend human rights to this labour sector (Jacobs et al, 2013: 276). The policy makers of the SD 7 had to ensure that the determination had the right balance between assuring the rights of domestic workers and making provisions for clauses that were absent from the BCEA, such as the recognition of payment in kind, provision of food in the workplace and provision for accommodation for live-in domestic workers (Jacobs et al, 2013: 276). The following discussion will provide a brief summary of SD 7.

2.4.1 Particulars of Employment

The sectoral determination compels the employer to issue the domestic worker with written particular of employment (SD 7). This document is given to the domestic worker when he/she starts work. The written document should include the following:

- (a) The full name and address of the employer
- (b) The name and occupation of the domestic worker, or a brief description of the work for which he/she is employed
- (c) The place of work, and where he/she is required or permitted to work
- (d) Date of employment
- (e) The domestic worker's ordinary hours of work and days of work
- (f) The domestic worker's wage or rate and method of payment
- (g) The rate of pay for overtime work
- (h) Any other cash payments he/she is entitled to
- (i) Any payment in kind he/she is entitled to and the value of payment in kind
- (j) How frequently wages will be paid
- (k) Any deductions to be made from wages
- (l) The leave he/she is entitled to
- (m) The period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate

Both the employer and the domestic worker must sign the document. The sectoral determination does suggest that the particulars of the document should be reviewed on an annual basis (SD 7).

2.4.2 Provisions on Working Time

The determination also makes provision for the hours of work, overtime, payment for overtime, night work. Standby, meal intervals, rest periods, payment for work on Sundays and public holidays (SD 7). The determination stipulates that a domestic worker should work a maximum of 45 hours per week, a maximum of 9 hours per day when working five days (SD 7). A domestic worker working for more than five days must work a maximum of 8 hours per day. Overtime may not exceed three hours in any day and a maximum of 15 hours overtime is permitted per week (SD 7). Provisions for meal intervals were included if the domestic worker worked continuously for more than five hours. The domestic worker is also entitled to rest periods, 12 consecutive hours during the day and 36 hours weekly (SD 7).

2.4.3 Leave Provisions

There are four different types of leave a domestic worker is entitled to. The first is annual leave which is three weeks per year or a day for 17 days worked (SD 7). The other type of leave is sick leave, the domestic worker is entitled to six week period in a cycle of 36 months (SD 7). Maternity leave is four months of unpaid leave and family responsibility leave is five days per year (SD 7).

2.4.4 Termination of Employment

In efforts to formalise the sector, contracts have to be drawn up and signed by both parties involved. These contracts may only be terminated only on notice of not less than one week if the domestic worker has been employed for six weeks or less (SD 7). For domestic workers who have been employed for six months or more, notice for termination must be given four weeks prior to termination (SD 7). Live-in domestic workers are allowed to stay on the premises for a month (notice period) or may agree to pay for the accommodation (SD 7). An employer who has to dismiss a domestic worker due to his/her economic structural set-up is required to provide the worker with severance pay (SD 7). Severance pay is only payable if there was no other alternative for employment. At least one week's pay for every completed twelve months of continuous service is required (SD 7). Once the termination of the

employee is complete, the employee is entitled to a certificate of service which includes the length of employment and sometimes the reasons for termination (SD 7).

2.5 MINIMUM WAGES

Crucially the SD 7 also introduced a national minimum wage in the sector. Since its establishment in the 19th century in New Zealand and Australia, the minimum wage has become a global phenomenon and is adopted across many countries (Cunningham, 2007: 6). A minimum wage is based on the principle of valuing work by establishing an hourly wage floor beneath which employers cannot pay their workers (Klein and Dompe, 2007: 126). In doing so, the minimum wage helps to equalize the imbalance in the bargaining power that low-paid workers face in the labour market (Klein and Dompe, 2007: 126). Government intervention in the form of the establishment of a wage floor is intended to protect the interest of workers and to assure a minimum standard of living amongst low-paid workers (Botha, 2009: 8). A minimum wage can also be seen as a tool in the fight against poverty amongst low-paid workers and as a mechanism to prevent the dilution of regulatory standards in the labour market (Cunningham, 2007; Crossman, 2001; Neumark and Wascher, 2002; Pauw and Leibbrandt, 2012). According to Naidoo et al (2007: 25), it is common for the state to establish the mechanism for the determination of minimum wages in industries where wages are unregulated by voluntary collective bargaining and where market forces push wages unacceptable low levels. While industrial relations scholars regard a minimum wage as an essential component in the efforts to combat exploitation and alleviate poverty, orthodox economists argue that the introduction of minimum wages can do more harm than good in the labour market (Dillow, 2005: 51, Bennet 2002).

The orthodox literature on minimum wages claims that there is an inverse relationship between minimum wages and employment; that is, the minimum wages invariably reduces employment (Adams and Moutos, 2006: 176). This inverse relationship can only be understood through the supply and demand model. This model posits that the imposition of a minimum wage will have a “disemployment” effect (Butler, 2006; Bennett, 2002; Dillow, 2005: 51). A minimum wage, according to orthodox economists, creates a disequilibrium in the labour market, which leads to a drop in employment levels because the minimum wage is invariably set above the market-clearing level determined by the laws of supply and demand

(Butler, 2006: 184). The employment level drops because employers cannot offer jobs at the minimum wage level and as a result fewer people are employed (Butler, 2006).

Heterodox economist on the other hand reject the claims of the neoclassical orthodoxy by arguing that there is no real empirical evidence that higher minimum wages produces unemployment (Card and Krueger, 1994: 792). Other studies on the minimum wage seem to suggest that it is difficult to isolate and identify the impact of the minimum wage (Dillow, 2005; Grimshaw and Carrol, 2006).

2.5.1 Minimum Wages in the Domestic Work Sector

Following the ECC's investigation that deemed workers in the domestic service sector to be vulnerable and exploited, the Commission noted that the minimum wage would improve the conditions of domestic workers while preventing job losses (ECC, 2002: 1). As such the Minister of labour imposed a minimum wage in the domestic service sector through the SD 7. The sectoral determination states that all domestic workers must be paid an hourly rate. These hourly rates differ from one area to the next and as such the sectoral determination demarcated the country into two geographical areas based on the average household income within different municipal areas (Budlender, 2010). Municipal areas with an average annual household income of R27 000 was specified as Area A. Areas with a lower average were specified as Area B (Budlender, 2010). For Area A, the hourly rate was R9.63, the weekly rate was R433.35, and the monthly rate was R1877.70 (Department of Labour, 2013). For Area B, the hourly rate was R8.30, the weekly rate was R373.50, and the monthly rate was R1618.37 (Department of Labour, 2013).

The minimum wage for this sector are adjusted annually by using a formula based on the Consumer Price Index (CPI). Wages in Area A are subjected to a CPI plus 1% annual increase. For Area B, wages are subjected to a CPI plus 2% annual increase (Department of labour, 2013). Employers who cannot afford the minimum wage are encouraged to reduce the hours of work rather than retrenching the employee. The determination does emphasize that it is illegal to pay lower than the prescribed hourly rate and if the employer pays more than prescribed hourly rate, he/she may not reduce the rate as it would be unfair labour practice (SD 7). As noted earlier, overtime is payable when the domestic worker works longer than the ordinary hours prescribed in a week, and overtime payment is one and a half times the hour rate (SD 7).

2.5.2 Information concerning Pay

Any payment can be in cash, by cheque or direct deposit into an account designated by an employee (SD 7). The payment must be given at the workplace, during working hours and in a sealed envelope, which becomes the property of the employee (SD 7). A payslip must be given at all times and the employer must keep the payslips for three years.

2.5.3 Deductions

The determination also deals with the payment of wages. This deals directly with deductions that are allowed and the ones that are illegal, Deductions that are permissible are medical insurance, savings, pension fund, trade union subscription, loan or advance and rentals (SD 7). Deduction that are not allowed are for meals provided during work time, clothing, breakages (crockery, electrical appliances) and work equipment (SD 7). Employers can deduct wages for accommodation on condition that the room provided is weatherproof and in good condition, the room must have a toilet and has at least one window and a door that can be locked, and lastly this room must be fitted with a toilet, bath/shower or have access to another bathroom (SD 7).

2.6 IMPACT OF SECTORAL DETERMINATION SEVEN

Studies examining the impact of SD 7 have had mixed findings. Some studies revealed that domestic workers have used the legislation to challenge their employer in the labour courts (Magwaza, 2008). This shows that the introduction of the Act has empowered some domestic workers and encourages them to demand their rights (Magwaza, 2008: 85). Another positive effect of the SD 7 is the rise in nominal wages since 2002 (Jacobs et al, 2013: 276). The introduction of minimum wages in the sector was followed by a number of scholars investigating the effects of the minimum wage (Fish, 2006; King, 2006; Ally, 2007).

The research conducted found no negative employment effects associated with the introduction of a minimum wage in the domestic worker sector (Hertz, 2005; Bhorat et al., 2000, 2012; Grimshaw and Carroll, 2006). The findings of the research suggested that the textbook argument of a trade-off between minimum wages and employment was not necessarily true (Bhorat, Kanbur and Mayet, 2012: 3). Bhorat and Mayet's (2013) study revealed that the introduction of the minimum wage had not had a negative effect on employment in the domestic worker sector. What did occur was an increase in the real wages after the introduction of the minimum wage (Bhorat and Mayet, 2013: 6). In some cases,

employers started to reduce existing working hours in order to afford or to combat the higher hourly rate (Bhorat and Mayet, 2013). This suggests that employers opted to reduce hours rather than employing fewer workers to deal with the impact of the minimum wage, which contradicts the predictions of orthodox economists.

Budlender (2010) argues that the supply and demand curve for domestic work would be different and therefore the disemployment effect would not occur. If, for example, an employer has ten workers, the employer can retrench one worker and try make the others work harder. In the domestic service sector, by contrast, one employer has a single domestic worker and if he/she retrenches the domestic worker the employer would have to the work themselves. Budlender (2010: 11) argues that this consideration would tend to lower or lessen the disemployment effect. It has also been found that SD 7 has had some unintended, negative consequences. The first of these is that SD 7 has, in some cases, negatively affected relations between workers and employers. For example, one of Magwaza's study participants reported that her employer was so angry at being 'raided' by a Department of Labour officer that she refused to give her worker the annual increase, arguing that the worker was already far too above the minimum wage (2008: 88). Domestic workers in Magwaza's study stated that some employers perceive SD 7 to be a "government imposition that brought about an unnecessary intrusion" resulting in "strained relations between employers and employees" (2008: 87). One of the biggest concerns expressed by some scholars is the restraints placed on Department of Labour officials expected to monitor the working conditions of domestic workers. Labour officials are prevented from 'entering domestic premises without the home-owner's consent', and thus are unable to monitor working conditions where employers are absent or unwilling to allow them entry (du Toit 2010: 223). Labour officials cite this as a major obstacle to the effective monitoring of working conditions for domestic workers, and have called for this to be amended in SD 7 (du Toit 2010: 223).

2.7 LIMITATIONS OF SECTORAL DETERMINATION SEVEN

Though there have been positive effects of the SD 7 since its introduction in the sector, some scholars have argued that domestic workers continue to be exploited by employers and have given certain reasons as to why this is so. The one factor that had been identified concerns the matter of implementation of SD 7. The fact that implementation of the SD 7 is dependent on individual employers in private spaces is a problem (Jacobs et al, 2013: 279). Du Toit (2010: 244) argued that 'indifference' or 'resistance' of the employers was the main issue with

regards to implementing the changes brought on by the SD 7. This ‘indifference’ or ‘resistance’ is heightened by the nature of the domestic labour space, a space conflated with the private home space of the employer (Cock 1989; Fish 2006). As it is a private space, it is ‘hidden’ from the public eye (Fish 2006: 116), rendering the employer ‘sovereign’ in her own space. Because of this, official labour processes are, to a certain extent, meaningless within the private or hidden household workspace as this space is difficult to monitor (Fish, 2006: 116).

The second barrier to implementation of SD 7 legislation is the workers limited knowledge of their rights and their capacity to enforce those rights (Jacobs et al, 2013: 280). Even though domestic workers general knowledge of their rights has improved since the introduction of the SD 7 legislation, their knowledge of specific provisions is either poor, incorrect or contradictory (Jacobs et al, 2013: 280). Magwaza’s (2008) study found that domestic workers capacity to enforce these rights may be limited by fear of backlash from the employer. Ultimately knowledge about ones rights applicable to the job is not enough because some workers preferred not to risk the possibility of losing their job (Magwaza, 2008: 88). Thus, the fear of poverty and unemployment is believed to limit domestic workers capacity to insist on their rights. In addition, du Toit (2010) argued that the devalued conception of domestic work results in the low self-esteem of domestic workers, which acts as a barrier to reducing power imbalances between domestic workers and their employers.

The prominent theme that seems to run through the literature is the disappointing effect that the introduction of the legislative rights has had on domestic worker sector. But this does not take away what these improvements meant to the domestic workers themselves. Ally (2009) found that most workers expressed positive sentiments towards the statutory requirements for a fair dismissal, stating that the requirements provided job security. It was important to the workers that their employers could not dismiss them at whim (Dalita, 2009). The laws also proved to provide domestic workers with an ability to fight for better conditions, not only being able to choose not to be a live-in domestic and be present mothers to their children, but the workers could have more freedom which is something they never had in the past (Dalita, 200: 15).

Even though there is much more security and freedom for domestic workers, some scholars (Fish, 2006) argue that domestic work is still structured by severe social inequalities that have their roots in colonial and apartheid time (Dalita, 2009). Dalita (2009) argues that black

women still continue to reproduce the daily life for the privileged (mainly white) population. Formalizing the sector was meant to balance out the inequalities that were powered by race and class, but some scholars claim that these inequalities are still apparent and these inequalities are perpetuated by the little salaries that domestic workers still earn (Dalita, 2009: 15). Even though the political dispensation has changed, antagonistic and low trust relationship between domestic workers and their employers remains unchanged and many domestic workers still feel trapped because of the lack of educational opportunities which leaves them with little other opportunities (Dalita, 2009: 15).

Ally's (2009) book, *From Servants to Workers*, focuses on how the regulation of the sector has overturned relations of servitude that were prevalent under apartheid. Ally (2009) acknowledges that the sectoral determination brought significant changes for domestic workers, but challenges a simplistic understanding of the achievements (Budlender, 2010). She argues that formalizing the sector has not changed the racial and class aspect that shapes the relationship between the domestic worker and the employer. The achievements are simplistic in the sense that they only tackle the procedural technicalities of the service such as the conditions of employment, but fail to address the unequal power relations between domestic workers and their employers which are deeply constructed by the colonial and apartheid state. Changing their status from 'servant' to 'worker' only grants them citizenship rights but does not change the paternalistic aspect of the relationship which creates an intense form of dependence from the side of the domestic worker. Ally (2009) argues that this disconnect with citizenship rights and power dynamics in the relationship can only be understood if we study this intimate form of labour. By doing so this will enable one to understand why the effort to turn servants into workers has produced such contradictory consequence (Ally, 2009: 10).

2.8 INTIMATE WORK

The disconnect between citizenship rights and power dynamic in the employment relationship suggests that there are features of the institution and practice of domestic labour that are difficult to reach by the way of worker rights (Jacobs, 2013: 282). Domestic work is not like any other form of work. Domestic workers workplaces are not impersonal organizations that can be easily regulated through depersonalized industrial relations system, instead the workplace of a domestic worker is the intimate spaces of family life (Ally, 2009: 95). The domestic worker is deeply entrenched in the private lives of their employers. From

washing under wear, changing sheets, to over-hearing family arguments, the lives of the employers becomes part of the domestics work (Ally, 2009: 98).

Jacobs et al (2013) argued that these longstanding, intimate and caring relations between workers and employers undermine the ability of the domestic worker to recognise the exploitation and limits to their rights. Domestic workers feel that they are ‘a part of the family’ and prefer not to enforce their legal rights in order to maintain these personalized relations with their employers (Jacobs et al, 2013: 282; Ally: 2010). The paternalistic aspect of domestic labour seems to undermine the efforts of the legislation to turn the domestic worker into to an agent that is able to access her rights and negotiate with her employer. It instils this form of loyalty from the domestic worker to a point where the worker dismisses any form of exploitation on account of the employer being ‘like a mother’ to the domestic worker. Thus, one needs to discuss paternalism further in the domestic labour context.

2.8.1 Paternalism

Domestic labour in South Africa has often been referred to as paternalistic (Cock, 1989: 81). Paternalism serves the interest of the privileged women by framing the unequal or exploitative relationships as caring or protective, making them more difficult to resist (Jacobs, 2013: 283). The paternalistic aspect of the relationship has two implications: there is a sense of superiority on the employer’s part and an intense sense of dependence on the side of the worker (Cock, 1989: 68). Cock’s study revealed that in the best of relationships the employer was viewed as a source of strength and support, especially in helping domestics with schooling expenses, clinic fees and presents of clothing (Cock, 1989: 68).

Cock (1989) argued that the ‘support’ or payment in-kind from the employer is a mechanism used by the employers of domestic workers to promote personal loyalty and commitment from their employees. Not only does the paternalistic care reinforce the dependence of the domestic worker on the employer but it also reinforces the hierarchical nature of the relationship between the domestic worker and the employer (Cock, 1989: 82). The fact that the employer can give the domestic worker gifts that she cannot return or repay shows the employer’s superiority and the subordination of the worker (Cock, 1989: 82). The act of gift giving is also used to mask or disguise the conflict of interest inherent in the relationship; for a lack of a better word to compensate for the exploitation (Cock, 1989: 82). Even though the sometimes-sincere generosity of the employers helps the domestic worker untangle herself from the laws and restrictions which bind the lives of black people, it also creates a kind of

paternalistic relationship that is entirely demeaning for the dependent servant (Cock, 1989: 82).

Like Cock (1989), Jacobs et al (2013) argued that the paternalistic care of the employer acts to compensate the domestic worker from the exploitation and also reduces the level of motivation on the part of the domestic worker to challenge exploitation and unfair treatment. In particular, the paternalistic aspect of the domestic labour relationship undermines resistance to exploitation in a number of ways (Jacobs et al, 2013: 289). The most important of these is the system of ‘reciprocated favours’. Jacobs et al (2013: 289) argued that the ‘help somebody who helps you’ imperative glosses the domestic labour relationship as equal and non-exploitative, and enables the domestic worker to dismiss instances of exploitation as ‘help’ offered in return for the employer’s support/paternalistic care. Thus, the workers are not seen as victims of exploitation but agents in a mutually beneficial relationship. This mutually beneficial relationships disguise the relationship as an equal and non-hierarchical relationship. Nonetheless, the idea of reciprocated exchange entrenches inequality and the so called ‘mutually beneficial relationship’ is a façade used to conceal the fact that the ‘help’ provided by the domestic worker is often required in terms of the working agreement; while the ‘help’ offered by the employer is often constituted as extra or gifts (Jacobs et al, 2013: 290). As such, paternalistic care values the domestic worker but devalues the labour and transforms domestic waged labour into charitable familial obligations that is based on loyalty (Ally, 2009: 99).

Workers, then, are bound in system of discrimination and affection, of exploitation and care (Jacobs et al, 2013: 291). Because these ‘gifts’ occur outside the formal labour relationship, they cannot be easily regulated by the SD 7, even though the legislation does make allowances for the disclosure of payments in kind (Jacobs et al, 2013: 291). While paternalistic care does help the domestic worker untangle herself from the poverty and also concede a measure of humanity and dignity to workers, it also undermines resistance and entrenches inequality (Jacobs et al, 2013: 290). By dismissing instances of exploitation and providing help or favours for their domestic workers, domestic workers maintain harmony in an unequal relationship at the expense of their own ability to resist or negotiate with the employers (Jacobs et al, 2013: 290).

Scholars such as Jacobs et al (2013), Ally (2010) and Fish (2006) have argued that the progressive domestic labour legislation in South Africa has not translated onto the social

justice in reality. Paternalism serves to reinforce hierarchy, devalue domestic labour and blunt motivation to resist (Jacobs et al, 2013: 290). And yet, current legislation provides no way of regulating this informal system of reciprocated favour and exchange which limits the ability of workers to negotiate their rights (Jacobs et al, 2013: 290). As such paternalism serves to lock domestic workers into relationships that are strongly reminiscent of apartheid; while still allowing domestic workers to feel that they are a valued and respected ‘member of the family’ (Jacobs et al, 2013: 290). The concept of paternalism is based on the ‘like-one-of-the-family’ myth and it also limits the ability of the worker to uncover the exploitative nature of the relationship but this will be discussed in further detail in the following section.

2.8.2 ‘Like-One-of-the-Family’ Myth

Working within the household puts the domestic worker in an ambiguous situation where she may seem like ‘one of the family’, but in reality she is merely a distant companion (Hansen, 1989). The fact that the domestic workers work is intertwined with the lives of the employer, employers tend to distance themselves from the domestic worker in order to avoid the uncomfortable situation (Ally, 2009: 98). Ultimately, the relationship between the domestic worker and employer is one where closeness, familiarity and intimacy resides alongside the distancing and estrangement (Ally, 2009: 98). Scholars argued that this ambiguity in the relationship forms the basis of the exploitation of paid domestic work, which structures the unique type of dependency and exploitation within this form of labour (Ally, 2009: 99).

Employers use the intimate nature of the paid domestic work as a practice of power, where they use the ‘like-one-of-the-family’ ideology to control and manipulate the domestic worker (Ally, 2009: 99). This ideology not only delegitimizes domestic work as real work but also erases the workers own familial obligations, and the employer can then extract further labour and loyalty through the myth of family obligation (Ally, 2009: 99). This myth belittles domestic work as a form of work and compels domestic workers to perform more duties out of familial obligation rather than part of the employment agreement (Ally, 2009: 100). Because domestic workers work within the emotion laden spaces of family life, they seem as if they are a part of the family in the sense that they know the inner workings of the household, they have practically raised the employer’s children in most cases and know most of the family secrets. In reality the domestic worker is not a member of the family which she works for, and she is constantly reminded by the implicit and sometimes explicit rules that

regulate what she can and cannot do in the household. This begs the question of what it means to be a part of the family for both parties involved.

Fish (2006) argued that for the worker, being a part of the family means wanting a certain amount of agency when it comes to performing certain tasks. Domestic workers also associated being a part of the family with being able to sit down and discuss their personal lives with their employers (Dalita, 2009: 41). Other domestic workers measured the relationship through the monetary value and the gifts received from the employer. Knowing that that their employers are in a better financial than they are, the relationship becomes one way to acquire money (Dalita, 2009: 41). This monetary aspect of the familial definition only reinforces the hierarchical and unequal standing between the employer and domestic worker which then undermines the efforts of the legislation of redressing the inequalities of this relationship. Even though both parties use this myth to extract more benefits, it is more detrimental to domestic worker in that it places the worker in a subordinate position where she is dependent on the employer which downplays the domestic worker as an independent agent that is able to access her rights and negotiate with her employer.

Dalita's (2009) study revealed that whilst some employers felt that it was important to treat their employers well, others came to a realisation that being too nice or being 'part of the family' did lead to the domestic workers taking advantage of the employers. Dalita (2009: 65) argued that in some instances it lowered the ability of the employers to assert power that they have over the domestic workers, with some it makes it difficult to tell the domestic worker when they have done something wrong. The employers also benefit from this notion because the bond that results from being part of the family will make it difficult for the domestic worker to challenge the employer's exploitation (Dalita, 2009: 65). It takes away the domestic worker's ability to demand better working conditions, for fear of coming across as ungrateful. Like the reciprocated favours' that stem from paternalistic care, this 'like-one-of-the-family' myth plays a major role in the hindering the ability of domestic workers to exercise their rights. This myth traps domestic workers in these fake bonds that result in the domestic worker feeling indebted to the employer and completely disregarding the sometimes poor working conditions. This illustrates that the legislation has failed to reach and transform the longstanding unequal power relations within the relationship that were structured by the colonial/ apartheid servitude. These unequal power relations are also evident in the provision for food.

2.8.3 Food and Power

Food is the central aspect through which one can view the relationship between domestic workers and employers not only because food transfers are usually an integral part of the relationship between employers and domestic workers, but also because food provision reveals the relations of power between the individuals concerned (Archer, 2011: 11). The distribution of food is a clear indicator of the power relations within the relationship, the giver of the food is usually the one who holds the most power whilst the receiver is the one in a much more subordinate position (Archer, 2011: 11). In the South African context, food has always been a site of power between domestic workers and employers. Historically, live-in domestic workers could not eat the meals they had prepared for the family. They had separate eating utensils and workers were provided with ‘servant rations’- food products that were distinctly different and inferior to that consumed by the employer and her family (Jacobs et al, 2013: 276).

The employers defended this norm by saying that the domestic workers requested the food they received but clearly this norm went beyond that. The separation in the living spaces, eating utensils and food pointed to the racial segregation at the time and the clear perpetuation of the black servant class that was beneath the white minority and not accustomed to the lifestyle of affluent white households. The control and separation of food further perpetuated the racial inequalities that were present at the time.

Archer (2011) argued that in post-apartheid South Africa, food is still a site of power and sometimes conflict. Even though there has been a shift from live-in to live-out domestic workers in the sector, most employers still provide their workers with food (i.e. lunch). Archer (2011) demonstrated that the end of apartheid and the introduction of SD 7 has also had a mixed effect. Archer (2011: 79) found that while some live-out domestic workers report that the quality of food they receive had improved since 1994, domestic workers generally received less food in total than they did during apartheid (Archer, 2011: 79).

Additionally, Archer (2011) argued that food provision – while seemingly in line with SD 7 – was often regulated by implicit rules reminiscent of the apartheid-era practice of ‘servant’s rations’, which discriminate against domestic workers. These implicit rules govern the distribution of food in most households between the domestic worker and the employer. These unspoken rules speak to the inequalities that still exist in the relationship. It might not be as explicit as separating the food, but it has the same effect in that assuming the domestic worker should know what food not to take perpetuates the idea that black domestic workers are accustomed to only eating certain foods and are not familiar with ‘luxury’ or ‘white

people's food'. This points to the socio-economic inequalities within the relationship which remain largely unchanged since the apartheid era.

2.9 CONCLUSION

The aim of this research project is to investigate the impact of the sectoral determination on the domestic worker sector. Particularly looking at how the legislation has failed to address the inequalities that still exist between the domestic worker and the employer. Like Jacobs et al (2013) study, this research project looks to investigate how the paternalistic nature of domestic labour can limit workers ability to exercise their rights as much as fear of unemployment and limited of knowledge on rights can. The research project will also look into food and as the literature shows, food is a particular site of hierarchies of classification and power, and exploring the concept of food distribution between the domestic worker and employer will further determine whether the relationship between the employer and the domestic worker is still determined by norms and codes of apartheid era employment.

This research will also investigate whether familial relations exist between domestic workers and their employers. In particular, the focus is on the different understandings that domestic workers and employers have about what it means to be 'a part of the family' and how this familial extension can have a limiting effect on the ability of the domestic worker to exercise her rights. Lastly, this research project looks to uncover the views of both the domestic worker and the employer on the effects of labour legislation on the sector. The next chapter, *Research Design*, will go into detail on how the data was collected and analysed to answer the research questions stated above.

CHAPTER THREE

RESEARCH DESIGN

3.1 INTRODUCTION

As mentioned in the previous chapter, the aim of this research project was to investigate the impact of the sectoral determination on the domestic worker sector. Specifically, this research aimed to investigate whether this sectoral determination had transformed domestic servants into workers, namely, independent agents that are able to access their rights and negotiate with their employers. But the literature showed that domestic workers were still trapped in exploitative and highly unequal relationship reminiscent to the apartheid era. This was a huge contradiction to independent agent that is able to access their right and negotiate them. In order to investigate if there have been any changes in employment conditions or changes in the highly unequal relationship between the domestic worker and employer, five concepts were formulated. These concepts are ‘help somebody who helps you’, ‘food’, ‘one of the family myth’, ‘changes and continuities’ and ‘knowledge of sectoral determination seven’. These concepts assisted in the process of making sense of the data and investigating whether there had been any significant changes in the historically unequal employment relationship.

The focus of the thesis – i.e. the impact of sectoral determination in the domestic sector – was framed using the interpretive paradigm. The interpretive theory is based on the notion that knowledge is socially constructed (Tracy, 2013: 40). From the interpretive point of view, reality is not something that is out there that the researcher can clearly explain, describe into a research report but rather reality and knowledge are constructed and reproduced through communication, interaction and practice (Tracy, 2013: 40). The interpretive paradigm suggest that it is absolutely important to analyse social action from the actors’ standpoint (Tracy, 2013: 41). Therefore, this paradigm was best suited for the research question as the research sought to investigate the respondents’ interpretation and perspective on the introduction of the sectoral determination in the domestic work sector. A qualitative methodology was utilized, namely semi- structured interviews. The main reason for the use of a qualitative research method was that it was best suited to address the research question, in that the question deals with trying to understand how the respondents feel and understand their

situation (Dalita, 2009). This allows the respondents to convey their own perspective on their own reality, ultimately provide their own perspective on the research question.

3.2 DATA COLLECTION METHOD

As mentioned previously, the method that was used to collect data was in-depth interviews. In-depth interviews are typically used with the collection of qualitative social data when the researcher is interested in people's experiences, behaviour and how and why they experience and understand the social world in this way (Matthews & Ross, 2010; Tracy, 2013; Brewer, 2010). The main advantage of using in-depth interviews is that they are flexible and adaptable to the needs of the participants and can enable people to talk about certain issues. Another advantage is that the researcher can be the primary instrument in that the researcher can both ask questions and also enable or probe the participants to give their answers (Matthews & Ross, 2010; Tracy, 2013). The interviews for this research were run in a conversational manner allowing the respondents the opportunity to share their experiences, sharing their feelings towards their employers. These factors helped provide an understanding into the relationship between the domestic workers and their employers.

3.2.1. Interviews with Domestic Workers

Eight face to face interviews were carried out. All the interviews were conducted where the respondent felt comfortable which was usually not at the house where they worked. All the interviews were conducted during the respondent's free time which was after work, as most of them were live out domestic workers. These face to face interviews enabled the researcher to interact with the respondents at a much deeper level. Interviews with domestic workers were carried out over a month. The data collection was carried out in Grahamstown and the reason for this choice was to provide a follow-up on Cock's (1989) seminal study on the employment relationship between white madams and black maids in Grahamstown during Apartheid. The interviews were at most an hour long and all the interviews were recorded and then transcribed. All the respondents were notified that the interviews were recorded and full confidentiality and anonymity was guaranteed.

3.2.2. Interviews with Employers

Interviews with the employers were conducted to get their perspective on the relationship they had with the domestic workers. Eight employers were interviewed, employers of the domestic workers that were interviewed previously. The research looked into the interactions

between the employer and the domestic worker, what role the domestic worker played in the lives of the employers. The interviews were scheduled according to the respondents' free time as most of the employers were employed except for the retired. Like the interviews with their domestic workers, the interviews with the employers were also recorded and transcribed. An interview schedule was used for all interviews and it served as a reminder of the important themes that needed to be covered in the interview. All the questions were open-ended except for the demographic questions such as age, highest grade completed and country of origin. The questions were drawn from other similar studies with regards to the domestic worker sector.

3.3 SAMPLING

In total there were sixteen interviews that were conducted. This number does fall short of the initial number of interviews that were supposed to be conducted which was twenty interviews. All respondents were found in Grahamstown but most of the domestic workers lived in the township of Joza. It was rather difficult to get respondents in their private homes as a result public spaces were used to find respondents. The main public place was the Cathedral of St. Michael and St. George where a notice was placed in the pew leaflet asking for participants for the research with contact details. This was the main source of attaining respondents and the rest were attained through asking current respondents if they knew other people who would be interested in participating in the research.

This technique is known as snowballing. Snowballing sampling refers to identifying several participants who fit the study's criteria and then ask those people to suggest a colleague, a friend, or a family member (Tracy, 2013: 136). Just like a snowball rolling downhill, snowball sampling plans can expand quickly. The main disadvantage of using this technique is that the sample can skew to one type group as respondents tend to suggest others who are similar to themselves. This results in the researcher not being sure if the cases selected represent the population but a qualitative, interpretivist study is not concerned with representivity. Below are lists containing all employee and employer respondents, with the some demographic information. Pseudonyms are provided to protect the identity of the respondents.

Table 1: List of employee respondents

Name	Age	Date of Interview	Race	Live In/ Live Out	Years Worked for Employer
Daphne	30	14 June 2014	Coloured	Live out	5
Nomsa	33	20 June 2014	Black	Live out	8
Xoliswa	35	8 July 2014	Black	Live out	5
Ntombi	45	7 July 2014	Black	Live out	3
Wandisile	42	15 June 2014	Black	Live out	2
Ondi	39	18 June 2014	Black	Live out	4
Nomaxabiso	32	22 June 2014	Black	Live in	3
Siphokazi	44	25 July 2014	Black	Live out	4

Table 2: List of employer respondents

Name	Age	Date of Interview	Race	Occupation
Mona	72	18 July 2014	White	Retired
Sheila	68	9 June 2014	White	Retired
Claire	75	16 June 2014	White	Retired
Mandisa	35	22 July 2014	Black	Teacher
Lisa	38	28 June 2014	White	Nurse
Jayde	40	10 June 2014	White	Restaurateur
Candice	32	11 June 2014	White	Housewife
Thembisa	31	20 July 2014	Black	Dentist

3.4 CHALLENGES OF THE RESEARCH

The domestic sector is one that is difficult to penetrate and gaining access was a problem initially. This was because it involved going into people's private spaces and some felt that it was in a way invading their space. It was more difficult for the domestic workers to open up about inner workings of the household as they felt it was not their place to share certain stories of a family they did not belong to. It was therefore difficult to gain access and as such access was the biggest challenge that faced this research. The difficulty of gaining access also affected the sample size. As mentioned previously, the research envisaged to have a sample size of twenty, whom ten would be domestic workers whilst the rest would be employers. Unfortunately only sixteen respondents were acquired, eight were domestic workers and the rest were employers.

Because the researcher chose to interview both the domestic worker and employer of the same home, this posed a challenge as most domestic workers didn't feel comfortable being interviewed in the presence of the employer. To overcome this obstacle, it was best to interview the domestic worker at a place of her choosing. This was much easier as most of the domestic workers were live-out domestic workers and the interviews were conducted after work. Language in some cases was a problem as most of the domestic workers felt comfortable speaking in Xhosa and so all the question had to be translated from English to Xhosa to accommodate the workers

3.5 ETHICS

This research followed the Rhodes University ethical protocols in the pursuing respondents' for the study. Participation in this study was voluntary and respondents were not enticed in any kind of way. Confidentiality was guaranteed and pseudonyms were used where the respondent did not feel comfortable with their names being used in the study. All respondents were notified that the interviews were recorded and transcribed and they were free to ask for their interviews not to be recorded. All respondents were shown a letter (see appendix B) from department notifying them that the researcher was a registered postgraduate student conducting research. The interviews were conducted in places where the respondents felt most comfortable.

3.6 CONCLUSION

This chapter described the research methodology used to collect data. As stated previously, a qualitative research methodology was used using the interpretive paradigm as the foundation. The main data collection method was in depth interviews and to make sense of the information gathered from the interviews, five concepts were formulated. These concepts are 'help somebody who helps you', 'food', 'one of the family myth', 'changes and continuities' and 'knowledge of sectoral determination seven'. These concepts assisted in the process of making sense of the data and investigating whether there had been any significant changes in the historically unequal employment relationship. The following chapter discusses these four concepts in effort to analyse the data collected and to present the findings.

CHAPTER FOUR

CHANGES AND CONTINUITIES IN DOMESTIC WORK

4.1 INTRODUCTION

The aim of this research project was investigate the impact of the sectoral determination in the domestic worker sector. Particularly investigating if there had been any significant changes in the sector since the introduction of the SD 7. The discussion of the literature revealed that even though there had been significant changes in the sector, there were still some continuities that the legislature could/did change. The aim of this research is to provide insights into the nature of the relationship that domestic workers have with their employers in Grahamstown, as a microcosm of post-apartheid South Africa.

Before the formalization of the sector, domestic workers were subject to long working hours with very low pay. Since the promulgation of the BCEA, domestic workers are fully recognized as workers who are able to access and negotiate their rights. With the introduction of SD7, domestic workers have acquired additional rights to minimum conditions. The literature reveals that the main challenges to the successful implementation of the SD7 are employers' 'indifference' or 'resistance' to the provisions of SD7. The other limitation to the successful implementation of the SD7 is the domestic workers' limited knowledge of their rights and their capacity to enforce those rights. One of the aims of this chapter is to look into the knowledge that both parties have of the laws that govern the employment conditions of domestic workers. It seeks to investigate whether there is implementation of these laws on part of the employers. This chapter will also investigate the views of both the domestic workers and the employers on the effects of the legislature on the sector. In particular, the research explores the perspectives of the domestic workers on whether these laws have brought any changes in employment conditions and their relationship with employers.

The other conceptual phrases utilised in the process of making sense of the data are 'help somebody who helps you', 'distant companion', and 'food as power'. The first phrase, *help somebody who helps you*, looks at how paternalistic care from the employers can limit the ability of the domestic worker to challenge exploitation, how the 'help somebody who helps

you' logic transforms domestic labour into favours done to thank or show gratitude to the employer for her 'help'/ 'support'. The second phrase, *distant companion*, investigates whether familial relations exist between domestic workers and their employers. A particular focus is on the different understanding that domestic workers and employers have about what it means to be 'a part of the family' and how this familial extension can have a limiting effect on the ability of the domestic worker to exercise her rights. The third phrase is *food as power*. As the literature shows, food is a particular site of hierarchies of classification and power, and exploring the concept of food distribution between the domestic worker and employer will further determine whether the relationship between the employer and the domestic worker is still determined by norms and codes of apartheid era employment.

4.2 PATERNALISTIC CARE: 'HELP SOMEBODY WHO HELPS YOU'

The literature does reveal that the relationship between the domestic worker and the employer is a paternalistic one, where the employer bestows gifts on the domestic worker only to mask the relationship as a caring and protective one, covering up its exploitative nature. In other words, paternalistic care of the employers serves to compensate the domestic worker from the exploitation. The participants of this study did illustrate that these gifts/ payment in kind still play a role in the relationship but on the surface these gifts reflected the sincere generosity of some employers. Domestic workers did show appreciation for the things that the employers do for them. Daphne is one of the many domestic workers who feel this way about her employer. She says: "I really do appreciate the things that she gives me because I do not earn much and at times I cannot to buy certain things so the things she gives me help me a lot. It also shows that she is a caring women" (Daphne, 2014). Her employer usually gives her old clothes, old appliance, small groceries and wage advancements. Nomsa has been working for her employer for eight years now. She is a live-out domestic worker, who earns a monthly salary of R1600. She said that her employer gives her a gift on her birthday. She said: "She is very interested in my children's wellbeing; so, she often asks if there is anything that they are short of and she tries to help me out with school fees when she is able" (Nomsa, 2014).

Nomsa and Daphne represent domestic workers who really appreciate the things that they receive from their employers. The common response was that they felt that they did not earn much and most of these women were the breadwinners at home so the support they received from the employers eased the financial strain on the domestic worker. The employers also expressed sympathy towards their domestic workers and felt the need to help out in certain

ways. Mona is a retired school teacher who lives by herself. Daphne is her domestic worker, who is a live-out domestic. Mona says that she does not have much money or possessions for that matter, but she tries to help Daphne as she knows that she is the sole breadwinner in her family since her sister, who used to work for Mona, died of Aids. She said: “I know that the wage that I give her is not enough to cover all the expenses, but I do try help out by giving her small package of groceries every day so that she can prepare supper when she gets home” (Mona, 2014).

Not all employers were so sympathetic to the employees. Some expressed that workers were already covered by the law and had benefits such as providing them with food and the minimum wage. Most of the employers felt that the minimum wage was rather high especially the older retired employers. Sheila said:

I do not earn a lot of money from my pension fund therefore I have had to reduce the number of hours that Xoliswa works in order for me to be able to pay her and for me to be able to afford. I do try giving her additional things such as tins of fish, vegetables but this is not on a regular basis. But I think the money that I give her is more than enough plus she has a meal when she arrives and when she leaves (Sheila, 2014).

Clearly the older generation of employers, specifically the retirees, could barely afford the minimum wage let alone buy the domestic workers food, help out with school fees. The responses from both the employer and the domestic worker does suggest that gift giving is still a common feature of this relationship, not so much as payments in kind. The literature does argue that these “gifts” are used by the employer as a mechanism used to promote personal loyalty and commitment from their employees. The responses from both the domestic worker and the employers does not portray the generosity of the employers as a way of compensating for their exploitative practices but rather as a gesture of kindness from the employers point of view. The domestic workers also expressed that it was comforting to know that their employers were willing to help them in any way as the wages were not enough to sustain them and their families. For the domestic workers, the help they receive from the employers brought some meaning to their relationship that went beyond just being the domestic worker in the employer’s household. For instance, Wandisile spoke very highly of her employer referring to her employer as a sister:

I take like a sister because if I am short of anything she always tries to help me. When a person you care about is in need, you will do everything you can to help that person and that's the type of relationship I have with her (Wandisile, 2014).

Like many others, Wandisile valued her relationship based on the fact that her employer helps her when she is in need. This shows that it is important for the domestic workers to come to their employers with problems as this brings some substance to the relationship that goes beyond just a contractual agreement of employment. The employers on the other hand did say that they appreciated the work that their domestic workers did for them, especially the elderly like Claire. Claire lives alone since her husband past away. Her domestic worker, Linda, works from Monday till Friday and also works on weekends if Claire needs her. Claire says that she is very old and cannot do chores around the house as she used to so Linda is very helpful in that regard. The younger employers also relied on their domestic workers especially those who worked nine to five jobs and also had children in school. Mandisa represents the younger employers who share these sentiments towards their employees:

I am a mother of two, a wife and on top of that I am a teacher. I do not have time during the week to tidy up the house, do laundry and make supper for my family as I go to school at 7 and come back at 5 in the afternoon. So Siphokazi helps me out a lot! She prepares lunch boxes for my children, irons their uniform, cleans the house, does laundry and even cooks supper before she leaves. I don't know what I what do without her, she is a life saver! (Mandisa, 2014).

Clearly both parties value each other and appreciate the roles that each person plays in their relationship. But this appreciation is taken a step further by domestic worker. Most domestic workers that were interviewed expressed great loyalty towards their employer's and the main reason behind this loyalty and gratitude was the 'help' that workers received from their employers. Below are some of the responses from the domestic workers when asked about their employers:

She is very good to me; her entire family is good to me. Whenever I cry about something, she always asks 'what is wrong?' and helps me with the problem. This is why I say I would do anything for this woman (Wandisile, 2014).

Mona has got no apartheid, she treats me very well. She even comes to my home to check on me sometimes. This shows that she has a good heart and is very giving (Daphne, 2014).

This family shows me a lot of respect. They can give me what I do not have with no problem and that is why I perform my job well for them (Xoliswa, 2014).

The physical ways in which the domestic worker is cared for, ‘they give me what I do not have with no problem’ (Xoliswa, 2014), and the emotional care and respect they are shown by the families they work for constructs the ‘help’ that these domestic workers receive from employers. This ‘help’ brings meaning to their relationship that goes beyond working for the employer, to feeling like a valued member of the family. This results in domestic labour being reduced to familial obligations based on loyalty. Nomaxabiso is the prime example of this. She is the only live-in domestic worker in this study. She revealed that during the weekends she has to look after the house and the children whilst her employers go out. Nomaxabiso said “I feed the children and put them to bed and they only come back much later”. Nomaxabiso said that she doesn’t mind looking after the children but she felt as if there was no knock off time, especially on weekends. She said:

It’s like you work non-stop and you don’t have time for yourself on the weekends. But I don’t mind because they are good to me and they always make it up to me by bringing me something nice (Nomaxabiso, 2014).

Nomaxabiso did not mention anything about receiving overtime for working those late hours during the weekend but this did not seem to bother her as she reassured herself of the good family that she was working for, which would find a way to thank her for staying up that late. It is this behaviour of dismissing exploitation by the employer and justifying it by how the employer compensates for this by “bringing me something nice” (Nomaxabiso, 2014). This behaviour was common with the other domestic workers who revealed what they disliked about their job but would quickly dismiss their dislikes with the employer’s generosity and kind heart:

I work for a good family with a lot of family members. This means that I must do laundry and ironing for all these people which means that on some days I knock off late because I have so much ironing to do (Nomsa, 2014).

I do not like washing the dog and I think I am not supposed to because I am a domestic worker who cleans the house (Ntombi, 2014).

I eat my food with plastic cup and plate. When I asked her why I eat with those she said she doesn't want me to break her cups and plates otherwise I would have to pay for the breakages. So she said it was the best option and I agree (Ondi, 2014).

The above responses indicate instances of either apartheid era practices or failure of the employer to abide by the provisions of working time set out in the determination. What is interesting is that the domestic workers do express disapproval to some things that they do for their employers but this disapproval is dismissed with the domestic worker saying that they work for a good family that "has no apartheid" (Daphne, 2014). The goodness of the family or the employer seems to carry more weight over problematic instances that could be deemed as unfair labour practices. One domestic worker even said:

I know I do things that I shouldn't be doing as a domestic worker, like helping her in the garden, but she always asks me nicely to help her and she gives vegetables from her garden (Xoliswa, 2014).

The emotional care that the domestic workers receive from their employers seems to be the one element of the employment relationship that they value the most. It is valued to a point where the domestic worker disregards blatant unfair labour practices by the employer by virtue of the employer 'being good to her' or 'asking her nicely'. The emotional and physical care by the employers does show that employers do value their domestic workers but the instances of unfair labour practices show how the labour that domestic worker perform is turned into favours done or 'help' based on gratitude and loyalty from the domestic worker that stems from the physical and emotional care. Like the study by Jacobs et al (2013), the emotional and physical care from the employers does hinder the ability of some of the domestic workers in this study to challenge exploitation and unfair treatment. The unfair treatment is quickly dismissed on account of the 'good nature' of the employer which then undermines the efforts of the SD 7 of turning domestic worker into agents that are motivated to challenge exploitation and negotiate their rights.

Not all domestic workers had this emotional bond with their employers. Some employers kept their relationship with their domestic workers professional and opted not to give their worker any extra gifts as they were already abiding with the minimum wage provisions,

paying for UIF etc. which they felt was more than enough. Below is a comment that illustrates this:

I know I pay her well because I always check the department of labour website for any changes in the minimum wage. I also check the laws concerning how many hours she must work in a day and we stick to that. I make sure she has a healthy meal when she is here. So I already do a lot for her so there is no need for me to give her more (Lisa, 2014).

This was a small number of the employers who felt this way but it points to the fact there are some employers who may not give their domestic workers 'extras' but still abide with the provisions in the legislation. These employers still take care of their domestic workers but not in a paternalistic way that undermines and demeans domestic work. Interestingly, domestic workers preferred employers who gave them extra gifts/help as this made the employer seem more 'human', 'caring' and showed that the employers had a genuine interest in the wellbeing of the domestic worker and her family. Clearly the personal connection was very important for a large number of the domestic workers in the study and this indicates that domestic workers prefer to maintain these personal/close relationship with their employer than disrupt the 'harmony' with challenging certain practices that could be seen as exploitative. Domestic workers are then trapped in relationships that may seem as caring on the surface, but there are hints of exploitation on part of the employer. This clearly illustrates how the employment relationship between the employer and domestic worker is characterised by the existence of both care and exploitation, discrimination and affection.

At first glance, the relationship between domestic workers and their employers seems like a mutually beneficial one where the employer depends on the domestic worker to perform chores around the house that the employer cannot do due to old age or time constraints. The domestic worker on the other hand benefits from the relationship financially through the wages they receive and through the gifts/support they receive from the employers. But as the literature has shown, and this study has revealed, this mutually depended/beneficial relationship is merely a front to conceal the hidden unfair and unequal relationship between both parties. The emotional and physical care that domestic workers receive serves to cloud the workers judgement to a point where instances of discrimination and exploitation are

dismissed on account of the ‘good nature’ of the employer. Which then limits the motivation of the domestic worker to challenge and oppose these instances.

Paternalistic care and payment in kind dates back to the apartheid era but it is still a very prominent element in the employment relationship in the democratic era. The domestic workers’ responses proves this and also illustrates their preference for employer to provide ‘help’ as this shows the ‘human’ side of the employer. Even though there are provisions in the legislation that speak to payments in kind, the ‘gifts’/‘help’ received by the domestic worker occur outside the formal labour relationship and as such physical and emotional care is not easily regulated by the SD 7. Thus the sometimes sincere generosity and care of the employer has unintended consequences on the relationship dynamic. It reinforces the hierarchy in the relationship in that it creates a sense of superiority on the employer’s part, being seen as the provider to the domestic work, whilst it creates a sense of dependency on the side of the worker. The other unintended consequence is the loyalty of the domestic worker to their employers despite the instances of discriminatory practices. The responses from the domestic workers clearly indicate that the employers ‘goodness’, which is derived from the emotional and physical care, surpasses the exploitation they experience. Simply put, domestic workers dismiss exploitative or discriminatory instances by virtue of their employer being good to them. This then lessens that ability and motivation of the domestic worker to challenge, oppose and negotiate their rights.

4.3 DISTANT COMPANION: ‘LIKE-ONE-OF-THE-FAMILY’ MYTH

The lives of the employer’s forms part of the domestic workers work and this is what distinguishes this type of labour from any other. The workplace of a domestic worker is the intimate spaces of family life. Being so involved in the lives of the employers puts the domestic worker in a position where the domestic worker may share some level of intimacy with her employer that constitutes her as part of the family. The paternalistic aspect of the relationship creates a situation where the employer considers the domestic worker as part of the family and the domestic worker feels like a member of the family. Thus this section seeks to investigate whether familial connection between the employers and domestic worker exists. It will also look into the different understanding from both parties on what it means to be a part of a family. Most importantly, how this familial extension can have a limiting effect on the ability of the domestic worker to challenge and negotiate their rights.

One needs to first establish what being part of the family means to both parties. Below are responses from the domestic workers on their understanding on what it means to be a part of the family:

If I am short of anything my employer is always willing to help me out in any way and that is what it means to be a part of this family (Nomsa, 2014).

I can sit down and talk to her about my problem at home. She is always interested to know how my family is doing. She is like a mother to me you know! (Daphne, 2014).

I am free to go into any room in the house. I can watch TV on my lunch break and she usually says that I should make myself feel at home here. Most worker are not treated like this in many homes (Ondi, 2014).

They treat me like a real member of the family. On my birthday, they got me a cake and a present and they even sang for me! It's nice to work here because I feel loved and respected like a family member (Siphokazi, 2014).

The above responses high light that domestic workers associate being a part of the family with the following: being able to talk to their employers about anything, particularly about personal problems; freedom to access any room in the household; being given gifts by the employer. The common theme from these responses highlights the importance of having a personal relationship with their employer. These personal relationships assure the domestic worker that they can depend on their employers in times of need. These personal relations could also be seen as a way of extracting more money from the employer. Many of the domestic workers were aware that their employers were well off financially and used that to their advantage. Ondi said:

I know she owns a fancy restaurant in town. So, when we talk and I cry and say 'I don't have money for this and that', she always says she will see what she can do and does help me (Ondi, 2014).

Knowing that their employers were in a better financial position than they were turns the relationship into a means of acquiring money and gifts. This level of dependency from the domestic worker then reinforces the already hierarchical dynamic in the relationship and places the domestic worker in a subordinate position that implies blind loyalty and gratitude. Even though some domestic workers were told to feel at home in their employer's

households, a number felt uncomfortable with the idea. Daphne represents those worker who felt this way:

Mrs Richardson is a very nice woman, who treats me well. She tells me that I should feel at home when I'm at her house. She says I can open the fridge and take anything I want when I'm hungry. I do not do this often as it makes me feel uncomfortable to make myself at home. This is my place of work and I respect her too much to do as I please in her house (Daphne, 2014).

The response from Daphne highlights an interesting aspect of social relations in domestic work. Even though she has been working for Mona for many years and is considered as one of the family, she is still not comfortable with “doing as she pleases” around the house. Instead of feeling like an outsider or not part of the family as the literature suggests, Daphne does state she is treated well and made to feel at home. However she does not want to make herself too comfortable as she deems this to be disrespectful. She also notes that the space in which she works does not allow her to “feel at home”. The fact that she works within the household means that there are explicit and implicit rules that remind her of the dominant figure in the relationship which is the employer. The space in which she works is also a site of power in the sense that she is employed to take care of the space and not to make it her living space but this distinction is not directly spoken to the domestic worker. It is this invisible boundary that is set by the employer, that is sometimes unintentionally set, that dictates how “at home” the domestic worker may behave.

It is these implicit/unspoken rules that govern how the domestic worker behaves in the employer's household. There is an assumption, on the employers part, that domestic workers are aware of these rules without the employer saying anything, “I tell her to make herself at home but she does know that certain rooms are not to be entered even if I haven't said so, specifically the bedroom I share with my husband” (Thembisa, 2014). The freedom to do ‘as you please’ or to ‘make yourself at home’ is limited by those unspoken rules that govern the home. By virtue of working in the household, the domestic worker has entered the space in which the employer is dominant so even though the employer expresses familial relations towards domestic worker or is told to feel at home, there are those unspoken rules of engagement that render the domestic worker a subordinate figure subject to domination by the employer.

However, there were other domestic workers who felt as if they were not treated as part of the family:

I don't feel as if I am a part of this family. If I was I would be able to open the fridge and take anything I want but my employer made it very clear that I can't take anything out from the fridge without asking her, what kind of family member must ask permission to take food from the fridge? (Xoliswa, 2014).

I have been working for my employers for six years now. I know what I can and cannot do in the household. I am there to work and my employer has made that very clear. Therefore I do not consider myself as a member of the family. I am only the maid (Ntombi, 2014).

These responses from the above show that the domestic workers' understanding of being part of the family is very different to how they are treated. For them being a part of the family meant having the autonomy to do certain things in the house without being reprimanded by their employer or being supervised. Below are the responses from employers on their view of the one-of-the-family notion. There was a very distinct gap between the responses of the employer and the domestic worker pertaining to the "one of the family" notion. On the one hand employers felt that their domestic workers were practically a part of the family:

Daphne has been working for me for about sixteen years now and before that her sister used to work for me; so, she is one of the family, really. Having worked with her sister and now working with Daphne, I think we share a bond. I live alone, so having her around brings me joy (Mona, 2014).

She has been looking after me for many years now. My children are old now, living their own lives, so having Linda around makes me feel like I am not alone. She is like a daughter to me now (Sheila, 2014).

We have been through a lot together over the years and with that being said, we share something special I think and I'm sure she knows that too! (Claire, 2014).

Most of the employers considered their domestic workers as members of their family. The number of years that the domestic worker worked also played a major role in the familial extension. The age of the employer played a very crucial part to the familial extension because the much younger employers expressed different thoughts. Lisa is a working mother

with two children. Ntombi has been working for Lisa for three years and she expressed different sentiments to the “one of the family” notion:

She has been working for me for only three years so I can’t really say that I consider her to be one of the family. Our relationship is very professional; I try not to be too nice because from my past experiences, they tend to take advantage of that (Lisa, 2014).

Others said:

I mean we get along but I wouldn’t take it as far as saying that she is like a sister me. I do try and help her out financially now and again though (Thembisa, 2014).

We have a good relationship, I appreciate everything that she does for me and my family but I don’t not know her personally so I can’t say she is like one of the family. We are more or less the same age so we do have mutual respect for each other but that is where it ends really (Candice, 2014).

Employers like Lisa feel when the domestic workers get too familiar with them it tends to result in them taking advantage of their pleasant nature. The ‘us’ versus ‘them’ logic here may indicate some implicit racist connotations. It feeds the stereotype that black domestic workers steal from their employers. This may indicate the unchanged perspective of the employer on black domestic workers. Other employers expressed that their pleasant nature lowers their ability to assert power over their domestic or even tell the domestic worker when they have done something wrong. Mandisa said:

She does a lot for me and my family and we show her our gratitude but sometimes when I tell her to do something, she hesitates to do it or she says she is busy when I know she won’t be busy that day. I usually leave her because she eventually does what I have asked but I can’t help but think she undermines me as her employer (Mandisa, 2014).

In order to avoid this the employers prefer to keep the relationship strictly on an employer-employee basis. This suggest that the employers want their workers to know their place in that relationship and not get close and crossed demarcated boundaries.

4.4 FOOD AS POWER

The discussion of food alone indicates that there are still practices within the distribution and production of food that are reminiscent to the apartheid practices. Particularly the implicit rules that govern what kinds of food the domestic worker is permitted to have which is similar to that of ‘servant’s rations’. These unspoken rules only indicate the skewed power relations and inequalities within the relationship. Even though there are provisions in the SD 7 regarding food, these implicit rules regulate food distribution in the household. The type of food they provide their workers was rather interesting. Most of the employers stated that they only bought food that the worker requested: “All she ever asks for is bread and polony so I give her exactly that” (Lisa, 2014). Other employers simply told the domestic workers that they could have anything in the fridge assuming the workers knew what they were permitted to eat:

I want her to feel welcome and feel at home so I tell her that she can have whatever she wants. I mean I don’t have rules on what she can’t have but I think she can use her own discretion when deciding what to have (Candice, 2014).

These implicit rules are what govern the distribution of food in most households between the domestic worker and the employer. These unspoken rules speak to the inequalities that still exist in the relationship. It might not be as explicit as separating the food but it has the same effect in that assuming the domestic worker should know what food not to take perpetuates the idea that black domestic workers are accustomed to only eating certain foods and are not familiar with luxury foods. This points to the socio-economic inequalities within the relationship which remains unchanged since the apartheid era. Having explored the notion of “one of the family” and what being a part means for both parties, the domestic workers associated being a part of the family with being allowed to eat the same food as the family. The above statement does suggest that there is a link between food and feeling like a member of the family and responses from the domestic worker highlights this link:

I have been working here for a long time and my employer does say that I am like a sister to her but would you serve your sister fish spread with bread and *Ricoffy* for lunch? I don’t think so (Nomsa, 2014).

If I was a member of this family, I would eat the same fancy food that they eat. She has never asked me if I would like some; she just assumes that I don’t want it.

Sometimes, I do prepare these meals, but then I end up eating something else (Linda, 2014).

The responses above show how important eating the same food is for the domestic workers. Eating the same food for them means being equal to their employer as separating the food says that they are not worthy to eat the same food as the family. Some employers did try to explain why they did this:

Look, I have often asked her what she would like to eat and it's always the same response. So why bother buying something that she will not eat or enjoy (Lisa, 2014).

Considering how high the minimum wage is, I think the food that I provide her with is more than enough and up to her standard because I wouldn't want to give her food that she is not familiar with (Wandisile, 2014).

This only illustrates the ignorance and the indifference of the employer toward the food preferences of the domestic workers. To assume that the domestic worker refers particular type of food that is different to what the employer eats only intensifies the inequalities in this relationship. With regards to eating together, most domestic workers were live-out workers so the employers were at work during lunch time. The retirees spent most of their time at home so they ate with their domestic workers: "I live alone so it is nice to have some company whilst you eat so we usually prepare a nice lunch that we eat together" (Mona, 2014). The study also showed that not all employers gave the domestic workers different food to the family, besides the odd three employers from the study. The rest of them felt that it was mandatory the domestic worker eat the same food as the rest of the family even if the domestic worker did not like the food. For the employers buying separate food is time consuming and adds unnecessary work for the employers:

I don't have time to be buying certain food that are not on my list and frankly I don't have the time to be wondering around the supermarket looking for certain foods when I could just buy what I usually buy for the family but in bulk (Candice, 2014).

It was very important for the employers that the domestic worker eat the same food as the rest of the family because they didn't want to reproduce apartheid-era norms. Others were more

concerned with their image arguing that they did not want to provide food that could be perceived as inferior to the rest of the family or to neighbours, colleagues. What was also interesting was that the domestic workers expressed that they didn't like the food that the family ate and the employers were aware of this but did nothing about because it proved to be too much work to ask what the domestic worker would be comfortable to eat and then purchase those particular type of food. It is the extra work and effort that the employer is trying to avoid so they would rather provide her with the same food that is available for the whole family then go that extra mile to grant the domestic worker her food wishes. It is not that the employer can't afford the food, as many employers were well off, but asking the domestic worker what they preferred to eat would lead to never ending requests from the domestic worker. So to avoid this, many employers just purchase what the rest of the family eats. Eating the same food as the family does not suggest any familial relations or equality in the relationship but rather the broader working relationship. This working relationship only creates an atmosphere of where the worker can feel comfortable working in, and where the employer doesn't have to feel guilty or feel that they are reproducing apartheid-era practices.

4.5 KNOWLEDGE OF SECTORAL DETERMINATION SEVEN

The majority of the employers in this study knew that there were laws related to domestic workers. However some employers were unsure of the actual name of the law but most of them knew that domestic workers were covered by the Basic Conditions of Employment Act. Though some of them didn't know that the sectoral determination existed, they still had basic knowledge on the provisions of the law:

I know that I must pay her the minimum wage, give her a healthy meal and also register her for UIF (Sheila, 2014).

I know that she has specific hours that she must work within in a day, like other nine-to-five jobs, and I make sure that I pay her the correct minimum wage (Lisa, 2014).

Because she lives with us, I know that I must provide her with suitable accommodation and I cannot deduct this from her monthly salary ... Well, I can deduct a certain amount but it obviously can't be a large amount (Candice, 2014).

Though the employers did not know the provisions in detail, it was refreshing to see that they knew the basics and implemented what they knew. Some employers were diligent when it came to knowing the laws pertaining to domestic worker and regularly visited the

Department of Labour website to check for changes in these provisions but also checked to see whether they abiding by the laws stipulated. Lisa was one of the employers who represented a small number of the employers who had greater and deeper knowledge on the provisions: “I always check the department of labour website for any changes in the minimum wage, I also check the laws concerning how many hours she must work in a day and we stick to that” (Lisa, 2014). Most employers were concerned with treating their domestic workers right and that meant enforcing the rights that they were aware of. Even though they had basic and sometimes limited knowledge of the provisions, it was better than complete resistance or indifference to the laws.

Domestic workers in this study were aware that there were laws that governed their conditions of employment. Most of the domestic workers were aware of the minimum wage which suggested that they associated the SD 7 with minimum wages and UIF. They all expressed that the minimum wage provided financial security for them. Knowing that they would receive a set amount every month meant that they could budget accordingly for that month. The fact that the law stipulated how much they were supposed to earn is what made them feel as if they too were workers recognised by the government:

It is so nice to know that every month I receive money to support my family! Like every other worker, I to can go to the bank and withdraw money like the rest of them (Nomsa, 2014).

I have a family to support and this is the only way I can support them. If I would lose this job my family would starve but knowing that my employer cannot dismiss me without good reason, and that I pay UIF, gives me relief (Daphne, 2014).

Not being dismissed at whim was also very important for them. Most, if not all, of these domestic workers were the only providers in their households so to know that there are certain procedures that the employer had to follow before they can dismiss them was a relief. Job and financial security proved to be important to the domestic workers and they all commended the government for that. Evidently the SD 7 meant job and financial security to the domestic worker. Both the employers and domestic worker had limited knowledge on the specific rules and provisions of the SD 7, the discussion below on all the provisions clearly illustrates that

4.5.1. Particulars of Employment

The determination requires the employer to issue a written particulars of employment, a contract. This written document must include, amongst other things, the specific tasks for which the domestic worker is employed to do. Both parties must then sign this written contract and it must be kept by the employer. It was disappointing to discover that the some employers had no idea that they had to have a written contract:

I was not aware that we had to draw up a contract for her. We just told her that we would be paying her a set amount for her to look after the house whilst we were at work (Thembisa, 2014).

I am a very old woman, so unless she reminds me or tells me about these things, then I will forget, let alone know about them (Sheila, 2014).

I didn't know that! I wonder if she knows ... Clearly we were both in the dark about this contract thing. I should definitely look into it (Mona, 2014).

The domestic workers on the other hand also didn't know about a contract that the employer had to draw up. But there was one domestic worker, Siphokazi, who had heard from a friend of hers that a contract must be drawn up that states what kind of work the domestic worker does, when she gets paid. Even though Siphokazi knew that there had to be a contract she opted not to tell her employer about this because she knew that her employer was not complying with the contract:

She is not a bad employer, but I know that it would be difficult for her to do a contract because she hires me to cook and clean but I sometimes help her with garden. I know that as a domestic worker, I must work inside the house not outside. But she is an old lady, so I help her anyway (Linda, 2014).

Another domestic worker said that even if she knew about the contract she still wouldn't tell her employer because "I know her, she will say she will do it but end up not doing it. So I do not want to nag her" (Nomaxabiso, 2014). The responses from the domestic workers reveals two things: the domestic workers were not aware that a contract had to be drawn up and the one that was aware opted not to tell the employer as she knew that the employer was not complying with the provisions because she did duties that fall outside her job description. The employment contract is by far the most vital piece of documentation in any employment relationship as it sets out the terms and conditions of employment. Without this contract, how

will the domestic worker negotiate or challenge some practices if she doesn't have a contract to refer back to. This issue needs to be looked into and the responsibility falls on employer to know of and most important draw up this contract.

4.5.2 Minimum Wages

Both the employers and the domestic workers knew about the minimum wage law. However there was a lot of uncertainty on what the exact minimum wage was. The number ranged from R800 to R1000 and in one case the domestic worker received R1600. Grahamstown, Makana Municipality, falls under Area A and the monthly minima during the time of the study was R1877.70. Those domestic workers who did reveal how much they earned showed that most employers paid their domestic workers lower than the prescribed rate. The responses below are reasoning given by the employers on this matter:

She only works on weekdays and her duties include cooking, washing and cleaning. She only cooks and cleans for two people so I don't think I should pay her R1600 simply because there is not a lot of work that she does. If she was working in a household with a lot of people where she has to cook, clean and do laundry then she would deserve that R1600 (Sheila, 2014).

Because I have children, her duties include ironing their uniform and making their lunch boxes. On top of that, she still cleans the house, does laundry ... She does a lot. So I pay her R1700 because she does a lot in this house and she deserves it (Mandisa, 2014).

I think the department has to take into consideration the type of household that the domestic worker works for because not all household are the same in terms of size and the number of people who reside in the house. So I think there should be different rates that take into consideration the type of household the worker works for because what you find now is that most people, like myself, who have small houses with a small number of people, end up paying so much when they cannot afford it (Candice, 2014).

For employers the amount that they paid the domestic worker all depended on two things: the type of household the domestic worker worked in, meaning the number of family members in household, and the number of duties that the domestic worker must do around that house. It

made no sense for the employer to pay a domestic worker the ‘very high’ minimum wage if the domestic worker worked for small family of three with less duties compared to a domestic worker who works for family of five with a number of duties. The issue of affordability of the minimum wage was also common amongst the employers:

I’m a retired teacher with little pension money. The minimum wage is very high and I cannot afford to pay her that amount so I pay her what I can afford. It’s better than nothing at the end of the day (Claire, 2014).

When I hired her, I made it very clear that I can only give her R600 and she agreed. When I see that my financial situation is better I will definitely look into paying her more. But for now it is all I can afford (Thembisa, 2014).

The issue of affordability coupled with the argument that there should be different rates for different households, suggest that the minimum wage is too high for some of the employers especially the retirees but domestic workers on the other hand said that the money that they receive is low:

She pays me R900. This is very little because I have a family of my I own that I have to feed, children to send to school. But it is better than not earning any money; at least I can put food on the table (Linda, 2014).

I earn R1000 every month which helps me but it never lasts to the end of the month so I end up asking her for advancements so my family and I can make it to the end of the month. I then have to pay her back when I get paid again so I am trapped in this cycle (Nomaxabiso, 2014).

The above responses reveals that there are some domestic workers who are paid below the minimum wage but instead of negotiating for higher pay, the domestic workers would rather accept what they earn because it is ‘better than nothing’ and be able to provide for their families. Their poverty stricken situations compel the domestic worker to accept what they earn in order to provide for their families. This shows that the fear of not being able to provide for their families restricts them from negotiating what they ought to be earning. It then comes down to either letting your family starve or accepting the little that you earn and most domestic workers choose the latter.

The sectoral determination also specifies hourly, weekly and monthly rates. Both parties were only aware of the monthly rate. The small number of domestic workers who were aware that there are weekly and monthly rates expressed that they would rather be paid hourly than monthly:

I think if I was paid hourly or weekly, I would get more money and my money would last me till the end of the month. She doesn't do that because she knows she will end up paying a lot for me (Nomaxabiso, 2014).

Paying the monthly rate seemed more logical to the employers as this was less expensive:

If I would pay her the hourly rate, I would end up paying her way more than I should. Paying her monthly is affordable and I know that I can budget for her salary every time I'm budgeting for the month. It is just easier that way (Candice, 2014).

This section has shown that both the domestic workers' and employers' knowledge of the minimum wage provision is rather basic. Be that as it may, both parties still have some sort knowledge pertaining to the minimum wage laws which is better than no knowledge at all. What is concerning is that almost all participants, both employer and domestic worker, had poor knowledge on specific provisions within the minimum wage law. All were unaware that domestic workers who worked for more than 27 hours or more per week had different minimum wage rates to those domestic workers who worked less than 27 hours per week. Limited knowledge on specific laws makes it harder for the domestic worker to know whether they are being paid the correct amount but the responses also showed that knowledge about ones rights is not enough because even though some of them were paid below the prescribe rate, they still opted to work and receive the low wages as opposed to not earning anything and starving. Ultimately the fear of poverty limits their capacity to insist on better pay.

4.5.3 Provisions on Working Time

The sectoral determination makes provision for the hours of work, overtime, payment for overtime, night work. Standby, meal intervals, rest periods, payment for work on Sundays and public holidays. Most domestic workers knew about the provisions on working time. In particular, live out domestic workers were rather vocal on provisions on working time. Most of the live-out domestic workers hours fell within the hours of work provision but the biggest

issue with regards to hours of work was the ‘knock off’ time. Most live-out domestic workers did reveal that they didn’t knock off at the time that both parties agreed on:

I arrive at work at 09h00 in the morning. I normally knock off at 17h00 in the afternoon but sometimes I leave much later because my employer sometimes comes home late. I cannot leave the house by itself so I usually wait for her to arrive, then I knock off (Ondi, 2014).

Sometimes I knock off late because I am not done with my duties in the house. Because I work for a big family, I have a lot to do from ironing clothes to cleaning the house and I cannot leave without completing these duties (Siphokazi, 2014).

I do not like the fact that she is very strict with the starting time but she does not respect my knock off time! When she makes me knock off late its fine, but when I am late in the morning. It is a big problem (Wandisile, 2014).

What agitated the domestic workers the most was that their knock off time was not respected by their employers. It was either the employer came back home late or the employer gave the domestic worker last minute duties that they had to do before they left. The domestic workers felt that since they respected starting time, the employers should respect their knock of time. The one live-in domestic worker in this study revealed that as a live-in domestic work, you never stop working, “It’s like you work non-stop and you don’t have time for yourself on the weekends” (Nomaxabiso, 2014). She said:

I wake up early in the morning to prepare breakfast and lunch boxes for the children. Then once everyone has left the house, I then clean the house. Once I’m done with that I take a bath, watch TV and have something to eat and relax. When it is 5 o’clock I know I must prepare supper then dish up, wash those dishes then I’m done for the day. I am usually tired at the end of the day (Nomaxabiso, 2014).

With regards to live-in domestic workers, abiding by the provision of hours of work becomes very difficult because there is no clear distinction of the domestic workers place of work and home. The fact that the domestic worker lives in the premises in which she works makes it difficult to monitor whether her employers abide by the provisions. Her employers did say however that they felt she was not over worked:

The only time she has to do a lot of work is in the morning where she has to prepare breakfast and lunch boxes for the kids. During the day she is all alone, watching TV, sleeping and taking long lunch breaks! (Thembisa, 2014).

Payment on overtime was also a big issue amongst the domestic workers in this study. They revealed that in some instance where they knocked off much later than the stipulated time, they were not paid for the over time but instead the employers would promise to make it up to them which usually meant payment in kind:

When she knows she will be late from work, she usually calls me and says ‘I’m sorry running late but I will make it up to you’. I know when she says that, she will bring me something nice (Ondi, 2014).

I would rather have her pay me in cash for the overtime that I have worked then have her give me things from her house. Money is always better because I can use for many things (Xoliswa, 2014).

Although the domestic workers did not reject the gifts that they receive from the employers, money was always the better option for them. The employers were in clear violation of the overtime law because it stipulates that the employee should be paid at one and a half times the workers wage or the worker may receive paid time off. This only shows that payment in kind is still a prominent feature in this relationship. The responses from domestic workers varied in relation to lunch breaks and meal intervals. Some said that they didn’t have time to eat or rest as they had a lot to do whilst others said they had more than enough time to rest during the day when their employers were at work:

The only time I am really busy is when I arrive at work and I have to clean the house, wash dishes etc. But I know once I’m done with that, I am free for the rest of the day and I can do whatever I like (Nomsa, 2014).

I choose not to take a break because sometimes there is a lot that I need to do and plus I want to knock off on time before the taxis end (Linda, 2014).

There are certain factors that affect when domestic workers take their meal intervals and rest periods but employers were still under the impression that domestic workers had a lot of time on their hands during the day when they are not around. Mandisa said: “

If it is not laundry day – which is only twice a week – then she doesn't have much to do because she would just only sweep and mop the floors. So I'm sure she makes the most out of her rest period (Mandisa, 2014).

The fact that the employers were at work most of the time, meant that they could not regulate these meal intervals and rest periods but the employers also noted that it would be impossible to have strict regulation of time as domestic worker workload is different from day to day.

4.5.4 Leave Provisions

The domestic worker is entitled to annual, sick, maternity, and family responsibility leave. All the participants were aware that there were provisions on leave but were unsure of how long leave was. Below are some of the responses from the domestic workers:

She was very understanding when a family member of mine passed away. She gave me five days off with pay (Daphne, 2014).

I come to work even if I have the flu, so I think sick leave only applies when you are really sick and cannot come to work. My employer always gives me medication for flu so that is nice of her (Nomsa, 2014).

As a live-in domestic worker you really don't have sick leave because you can't go home to your family. Instead they buy me medication. If it is really serious, they take me to the doctor. What is nice is that they do not deduct these costs from my monthly salary (Nomaxabiso, 2014).

Employers did know the provisions on leave but the most common one they dealt with was sick leave. Those employers who had jobs said that if the domestic worker had flu she would still have to work because 'it wasn't that serious' and they needed someone to guard the house whilst they are at work: "I normally just give her some flu medication and call her during the day to check up on her" (Candice, 2014). The retirees on the other hand were much more lenient:

If she comes to work and I see that she is not well, I usually give her medication and if that does not help, I send her home. If she does not come to work after that, I know that she is recovering at home and I do not ask her to bring a sick note when she returns (Mona, 2014).

If she is not feeling well I send her home if I don't desperately need her that day. I can still do chores around the house so she doesn't have to worry about that! (Sheila, 2014).

4.5.5 Information concerning Pay

Sectoral determination stipulates that payment of monthly, weekly and hourly rate can be in cash, by cheque or direct deposit into an account designated by an employee. The domestic workers felt that depositing money into their account was much safer than carrying an envelope full of money in your purse. Below are some of the preferred method of payment:

I prefer her depositing the money in my account because it's more modern and I also feel like 'real' worker when I go to the ATM to withdraw my money (Ntombi, 2014).

Paying electronically means I can ask the bank for my payslip so that when I want to open a clothing account I can (Siphokazi, 2014).

Employers on the other hand also opted for depositing the money to the domestic workers bank account as this was the quicker way to pay their employees. Jayde said "It just makes it easier for me to send her the money, plus I don't even need to go to the bank I just do it on my phone with cell phone banking" (Jayde, 2014). The much older employers paid their domestic workers in cash, in a sealed envelope. Most of them had been paying their employee this way since they started working. There were only a few domestic workers who expressed some concerns with the electronic payment method:

Sometimes when she says she has put in the money, I go and check at the ATM and there is no money. When I tell her about this she says: 'sorry, I forgot, Wandi!' That is why I think she should place the money on my hands to avoid her forgetting (Wandisile, 2014).

This section has revealed that, though both parties have knowledge on the laws pertaining to the domestic labour sector, this knowledge is simplistic. The result of this is that some employers were not abiding by the provisions made in the determination. Though there were a few employers who complied with the laws, a large number employers were not abiding by the provisions and whilst most domestic workers were aware of this, they did nothing to challenge the lack of legal practice with the employer. The common reasoning that ran through the responses from the domestic workers was the either fear of unemployment (not

being able to provide for their families) or they would be compensated some way or another and this was usually through gifts.

The physical and emotional care of domestic workers seems to run through this entire chapter which indicates the prominence of paternalistic care in the employment relationship between the employer and domestic worker. The intimate nature of this type of employment makes paternalistic care unavoidable which suggest that the sense of loyalty from the domestic worker is also unavoidable. This means that domestic workers are in a never ending cycle of discrimination coupled with care, where there are cases of unfair labour practices but the employer softens this blow with generosity and kindness, put another compensating for the exploitation. Though the generosity of some employers may be genuine care for the domestic worker, it has unintended consequences that effect the domestic workers ability to challenge and negotiate their rights. This entire chapter demonstrates that the progressive domestic labour legislation in South Africa has not translated onto the social justice in reality because continuities of exploitative and discriminatory practices are still prominent in the employment relationship when viewed through the lens of paternalistic care, food distribution and one-of-the-family myth.

CHAPTER FIVE

CONCLUSION

Domestic work is generally perceived as a vulnerable labour sector, characterised by exploitation, poor working conditions and gender inequalities. The South African domestic labour sector was no different and this was largely shaped by the apartheid regime. Domestic work under apartheid was characterised by exploitative pay, oppressive working conditions, dehumanising racism and sexism (Jacobs et al, 2013: 275). To redress the inequalities in the relationship and instil an ethos of 'decent work' for domestic workers, the democratic government passed laws and legislature that would protect the rights of domestic workers. Not only would the legislature protect the rights of domestic workers, but it would portray workers as agents who are motivated to challenge exploitation by their employer. While the legislation, particularly the SD 7, has improved the working conditions of domestic workers this study has shown how a large some of domestic workers are still trapped in exploitative working relationships.

The fourth chapter revealed a number of reasons as to why there has been a limited effect of the SD 7 on the domestic labour sector. The reasons include the limited knowledge by the domestic worker and employer about their rights. The study also revealed that fear of poverty could limit the domestic workers agency in enforcing or challenging employers as many domestic workers opted to accept low wages then starve. The discussion in the literature revealed that reason there has been a contradicting effect of the legislature on the sector is due to the intimate nature of the occupation. This Paternalistic aspect of the relationship reinforce inequalities and hierarchies in the relationship.

The affectionate bond that developed between the employer and the domestic worker proved to undermine the ability of the domestic worker to recognise and challenge the exploitation from the employer. Many of the domestic workers believed that they were an integral part of the families they work for and prefer not to enforce their legal rights in order to maintain these 'personalize relations'. These personalized relations were important to the domestic worker as it transformed the employment relationship into one of 'friendship'. The study showed that domestic workers only valued these personal relations because of the gifts/the

emotional and physical care that they receive. The problem with emotional and physical care was that it creates a sense of gratitude and loyalty from the worker. This loyalty or gratitude then clouded the judgment of the domestic worker from acknowledging and challenging exploitation and discrimination. The logic was that the domestic worker can't complain as this would come across as being ungrateful to what the employer has done for her. In order to repay what the employer has done for her, the domestic worker went beyond her call of duty to return or repay the favour to the employer. Thus workers are seen as agents in a mutually beneficial/dependent relationship. This mutually beneficial/dependent relationship disguises the relationship as an equal and non-hierarchical relationship. In reality this 'help somebody who helps you' mentality serves to reinforce hierarchy, devalue domestic work and preserve an unequal working relationship structured by the colonial and apartheid servitude.

Other setback that undermine the efforts of portraying domestic workers as agents who are in an equal working relationship are food and the 'one of the family' myth. The discussion of food alone did indicate there are still practices within the distribution and production of food that are reminiscent to the apartheid practices. Particularly the implicit rules that govern what kinds of food the domestic worker is permitted to have which is similar to that of 'servant's rations'. The rules were not be as explicit as separating the domestic workers food from the family but it had the same discriminatory effect that perpetuates the idea that domestic workers were not accustomed to 'luxury food' and therefore should be given appropriate food fitting to them. These unspoken rules only indicate the skewed power relations and inequalities within the relationship. Even though there are provisions in the SD 7 regarding food, these implicit rules regulated food distribution in the household. The common pattern here is that the legislation may have provisions that were specifically passed to address the social and historical context of domestic labour, but the problem is that these provisions fell short in the private homes of the employer. They fell short because domestic labour is still governed by 'norms' that were structured by colonial and apartheid servitude and food is a prime example of that.

The extension of familial bond to domestic workers also illustrated how it could limit the efforts of the SD 7. Like emotional/physical care that stem from paternalistic care, the 'one of the family' myth plays a major role in the hindering the ability of domestic workers to exercise their rights. This myth traps domestic workers in these fake bonds that result in the domestic worker feeling indebted to the employer and completely disregarding the sometimes

poor working conditions. Employers use this supposed closeness to manipulate domestic worker into thinking that there are an important part of the family, whilst turning this waged labour into family obligations. Whilst the domestic worker may feel like a member of the family, there are certain unspoken rules that remind her that she is not a true member of the household. That is why Hansen (1989) describes domestic workers as 'distant companions: affection and discrimination coexist, where care and exploitation occur together. The employer strategically manipulates this closeness to mask the relationship as waged work and also blur the dramatic inequalities in the relationship through this myth to suggest some sort of equality in the relationship.

The aim of this research project was to investigate the impact of the sectoral determination on the domestic worker sector. Particularly looking at how the legislation had failed to address the inequalities that still exist between the domestic worker and the employer. The fourth chapter revealed that there has been significant impact in the sector since the introduction of the determination. But with the changes that came, certain continuities of exploitative and discriminatory practices were still prominent in the employment relationship. These were common in the discussion of food distribution in the household. These continuities only point to the fact that the unequal relationship between the domestic worker and employer is still unchanged and is the result of the intimate nature of the job. The intimate nature of the job makes it harder for the legislation to penetrate and change the social injustices that are still apparent in the relationship. This shows that the right-based approach does not necessarily translate to the effective changes in the sector as there are informal codes of practice that cannot be penetrated by way of right-based approach. These informal codes of practice need to be dealt with first before the right-based approach can work.

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APPENDIX A: INTERVIEW SCHEDULE FOR DOMESTIC WORKERS

A. Background Information

1. Name of respondent?
2. Age of respondent?
3. Marital status?
4. Do you have children?
5. If yes, how many are they?
6. Do your children live with you?
7. How many times do you see your children in a week?
8. How old are they?
9. Educational background?
10. Place of residence?

B. Employment History

11. Where were you working before?
12. Length of domestic employment?
13. How long have been working for current employer
14. What are your duties and tasks?
15. How many hours a week do you work?
16. How much do you earn?
17. Do you have a contract of employment?
18. Do you receive any benefits (UIF, pension fund, etc.)?
19. Live-in or live-out worker?
20. If live-in, what type of accommodation is offered?

21. How does she feel about being live-in worker?

C. Relationship with the employer

22. How did you find out about the job?

23. Did you have any prior knowledge of the employer?

24. Would you say there is a relationship between you and your employer?

25. Does living-in affect the relationship with the employer?

26. Do you think if you were living-out it would be different?

27. Who gives you orders?

28. What do you like best about your job?

29. What do you like least about your job?

30. Do you discuss your personal life with your employer?

31. Do you feel like you are part of the family?

32. What does being part of the family mean to you?

33. Do you eat your meals with the family?

34. Do you eat the same meal as the family?

35. Are you allowed to use all the equipment in the family?

36. What do you think the feelings of your employer are towards you?

37. Did you expect your employer to treat the way that they do?

APPENDIX B: CONSENT LETTER



RHODES UNIVERSITY

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Department of Sociology

☎ 046 6038361

20 March 2014

TO WHOM IT MAY CONCERN

This letter serves to confirm that Ms Saphokazi Nxokweni, student number: 610N2882 is a Masters student in our Department. As part of the Masters programme, our students are required to conduct a research project. The research process is a vital component of our teaching programme and we would appreciate any assistance that you could give to enable her to meet her commitments in this regard.

We confirm that the research process has been cleared by ethics at departmental level on behalf of the university.

Many thanks.

Yours sincerely

A handwritten signature in black ink, appearing to be 'K. Helliker'.

Professor K. Helliker
Head of Department

