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**The socio-economic and legal position of  
domestic workers in Malawi: A case study of  
Zomba municipality**

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Lucius Pendame

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Supervisor: Dr A. Tsanga

## **Declaration**

I **Lucius Pendame** declare that the work contained in this thesis is my own, not a single part therein has ever been part or fully published for academic purposes at this or any other university. I bear full responsibilities for any incorrect citations and quotations contained in this work.

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## *Dedication*

I dedicate this work to my late parents, Mr and Mrs Pendame, without whose support for my early education I would not have had this chance to study further. I salute my late brother, James Pendame, for inspiring me during our early school days, I do not forget those days. May their souls rest in peace!

## **Acronyms**

MARDEF	Malawi Rural Development Fund
NGO	non-governmental organization
UNDP	United Nations Development Programme
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
ZIDAWU	Zimbabwe Domestic and Allied Workers' Union
ZIDWEA	Zimbabwe Domestic Workers' Employers Association
MSCE	Malawi School Certificate of Education
PACHPR	Protocol to African Charter on Human and People's Rights on the rights of Women in Africa
ILO	International Labour Organization

## **List of statutes**

Employment Act of Malawi (2000)

Constitution of Malawi (1999)

Labour Act Chapter 28:01; SI377 1992: Labour Relations (Domestic Workers) Employment Regulations of Zimbabwe.

## **International instruments**

ILO Conventions: C138 of 1973, Minimum Wage Convention.

C60 of 1937, Minimum Wage Convention (revised)

C131 Minimum wage fixing with reference to developing countries

C103 of 1952, Maternity Protection Convention

C171 of 1990, Convention on Night Work of young persons (Non-Industrial Occupations).

## **International Human Rights Instruments:**

African Charter on Human and People's Rights.

Convention on the Elimination of all forms of Discrimination against Women

Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa.

## CHAPTER ONE

### Introduction

Malawi does not have any legislation that gives a precise description of a domestic worker. The prevailing Employment Act offers protection to general employees who all work under similar public conditions. It is not possible, however, to compare domestic employment with other sectors if we are to analyze the efficacy of the application of the Act since the domestic employment sector operates in private. It is from this premise that the current legislation is considered deficient in offering protection to domestic workers in Malawi.

I begin by describing what a domestic worker is to pave the way for analysis in the study. Busia (1991) described domestic workers as servants whose responsibilities were to carry out domestic duties. While his definition lacks specific details of the roles of the workers, Zimbabwe's working description of domestic workers enshrined in the Domestic Workers' Regulations looks at the institution in a more specific manner. These regulations describe a domestic worker as a person employed in a private household to render services as a yard worker, cook or housekeeper, child minder, and so on. The provision states that a cook or housekeeper's duties include cooking, housekeeping, food preparation dishwashing, laundry and ironing but does not include child minding.

If this latter description is borrowed for the purpose of this work, then most employers in Malawi need to be schooled if they are to handle the institution of domestic workers properly. Basically, the society conceptualizes domestic workers as performing all the work that is done in the home, as viewed by Busia in Ghana (1991:14). Meanwhile the constitution of Malawi section 31 provides for labour rights stating that every person shall have the right to fair and safe labour practice and fair remuneration.

#### **When is a domestic worker an employee?**

The dilemma lies in the lack of knowledge of the law. The Employment Act of Malawi, however, recognizes domestic workers within the context of the general definition of an employee.<sup>1</sup> It is because domestic workers enter into a contract with a view to receiving economic remuneration that they become employees.

#### **Why domestic workers?**

It is worthwhile examining the historical perspective of domestic workers in Africa before I attempt to give the common experiences of domestic workers in Malawi.

Busia (1991) writes that domestic service as an institution in Africa originates from the period when the colonialists came to Africa and they decided they needed people to help them with their household work. This is substantiated by the white settlers in Zimbabwe who were used to employing domestic workers from as early as the 1930s (Dube, 2000). The major problem was that the colonialists valued their formal work and business more and as a result they needed someone to take care of the domestic work for them.

Busia (1991) continues by indicating that after independence, African indigenous élites inherited the practice left by the colonialists and this made them the next generation of employers of domestic workers (Busia, 1991:12). One reason was that they wanted to guard and enjoy the prestige acquired from their newly gained status. They stay in bungalows with their nuclear families; following the colonial pattern, obviously they cannot take care of the house themselves. Dube (2000:98) further indicates that since both parents would go out to work inevitably they needed someone to look after the children. These represent some of the reasons that domestic workers find themselves in this profession.

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<sup>1</sup> An employee is 'any person who performs work or services for another person for remuneration...under an oral or written contract expressly stated or implied'.

The current position is somewhat different in the sense that some employers today may have no better reasons for engaging domestic workers other than the desire to save the family members from having to do kitchen, laundry and cleaning work around their houses. Most employers would therefore consider that domestic work is too hard and it would be degrading to have to care and cook for themselves. I am making this assertion because some employers struggle to maintain their workers and one wonders why they insist on engaging the services of domestic workers?

### **Problematizing domestic work**

By 2001, 65 per cent of Malawians were living below the poverty line, earning below one United States cent per day. Recently the country has been hit by famine and the HIV/AIDS pandemic. As of 2003, the rate of HIV infection was at 14.4 per cent among the adult population.<sup>2</sup>

Because of poverty many people migrate from the rural areas into the townships to try to find alternative ways of surviving. The famine, on the other hand, leaves many women and children seeking employment in the townships. My experience is that their expectations are not high – they are simply looking for any opportunity for survival. This is evident in that most of these job seekers return to their villages once the grain is ready to reap in the fields. This is their salvation. Consequently, because of employers' experience of this they do not want to commit themselves to such workers. They in turn offer very poor conditions, including low remuneration.

The implication of the high rate of HIV infection and AIDS is the increase in the number of orphans. Owing to poverty, most rural people are unable to care for the orphans in their areas; as a result they migrate in search of jobs in the townships. This tendency increases the number of people looking for jobs in Malawi's townships and eventually increases the urban population.

It is therefore population pressure in the townships that forces even relatively poor households to engage domestic workers. This phenomenon exacerbates exploitation and abuse of domestic workers and some of the bourgeoisie even take advantage of the situation.

### **Engaging a domestic worker**

Owing to their vulnerability and the desperation facing most workers in Malawi, employers do not advertise the vacancies at all. The labour market is always flooded to the extent that nearly every morning you may hear a knock on the door – a potential domestic worker has come to offer his or her services. The choice rests solely with the employer. However, in most instances employers prefer to engage domestic workers they identify themselves by going to the rural areas, that way they can ascertain issues of security since the domestic workers stay with them in their houses.

### **The research problem**

Domestic workers in Malawi operate in an environment where the existing legislative provisions exclude general contractual terms that are important to their conditions of service.<sup>3</sup> In this case domestic employment is not specifically regulated and as a result some employers exploit and abuse their employees. Further observations indicate that there is a gross violation of domestic workers' human rights in Malawi. It would therefore appear from this premise that there is insufficient application of the present employment laws on behalf of domestic workers in Malawi.

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<sup>2</sup> UNICEF (2001), *Malawi programme plan of operation for health: 200-2006*, reports that on average 267 people are infected daily and 139 die of AIDS-related infections. URL: [www.undp.org.mw/reports/undaf](http://www.undp.org.mw/reports/undaf)

<sup>3</sup> See general terms of contract as given from section 25 of the Employment Act of Malawi.



### **Justification for the study**

Looking at the literature on the subject in Malawi, it would appear that not much has been written or researched so this serves as an exploratory study. Because there has been no grounded study on domestic workers where workers themselves were engaged and able to share their experiences, this study provides a forum where arguments surrounding the issue of domestic work may be rooted.

### **Study aim**

This study aims to explore the lived realities of domestic workers and how these experiences could form a basis for legal amendments in the Employment Act of Malawi and the formulation of the Domestic Workers' Regulations Act.

The objectives of the study are to:

- Establish the gender dynamics of domestic workers;
- Establish the age dynamics of domestic workers;
- Examine the socio-economic exploitation of domestic workers;
- Ascertain the lived realities of domestic workers; and
- Examine legal implications affecting domestic work and prospects for legal reform.

The study assumptions were that:

- Socio-economic realities prompt people to seek employment as domestic workers in Malawi;
- Employers prefer female and young domestic workers in Malawi;
- People are employed as domestic workers in Malawi because they are a source of cheap labour;
- There is socio-economic exploitation of domestic workers in Malawi; and
- The employment laws of Malawi do not adequately regulate domestic workers.

The research questions were as follows:

- 1 Do socio-economic realities prompt people to seek employment as domestic workers in Malawi?
- 2 Do employers prefer females and young domestic workers in Malawi?
- 3 Are people employed as domestic workers because they provide a source of cheap labour in Malawi?
- 4 Is there socio-economic exploitation of domestic workers in Malawi?
- 5 Do the employment laws of Malawi inadequately regulate domestic workers?

## CHAPTER TWO

### Literature review and legal framework

#### Literature review

##### Domestic workers and their social status

It is not uncommon to see domestic workers in Malawi's households. The usual scenario is that many of these are children, working as members of the family or as employees. Malawi is further put on record for harbouring the highest child labour rates in this region of Africa (Torres, 2000). According to Torres, most of these children do domestic work, the core emphasis in this study. He further cites the reasons behind this, inter alia, as poverty, lack of resources and poor institutional and regulatory settings that make families perceive child labour as a priority over schooling. Torres also makes an assertion that children are often included in the informal market where they work in the domestic arena cleaning and caring for younger children at wages well below the minimum rates.

Reynolds analyzes domestic work as essentially female work and observes that male tasks within this arena are more defined and generally accomplished within a limited time (Reynolds, 1991).<sup>4</sup> From this it can be seen that domestic work has remained more a career for female employees rather than male employees.

Domestic employment has been in existence in Africa from the colonial period (Busia, 1991). This manifests itself as one begins to trace the background of the profession. Empirical evidence reveals that as early as the 1930s the white settlers were already employing native, unmarried girl children from their rural and poor homes to work in town as domestic workers (Dube, 2000). The gendered implication for their choice of females as opposed to male workers comes in the context of the reasoning behind this action.<sup>13</sup> It is not clear however whether they were paid appropriately or whether they were victims of economic exploitation.

##### Nature of the contract

It is evident that domestic workers generally experience identical problems in most African countries. The major concern is the way domestic workers are contracted – in most cases employers expect them to enter into an open and undemarcated contract where they will agree to do all the domestic work. In Ghana, Busia (1991) writes that domestic workers have no set of defined duties; the work involves everything and nothing in particular (Busia, 1991:13). The problem is further aggravated by lack of conditions of work to guide the profession. Similar experiences with domestic workers in Malawi have created the background to this paper which is geared at examining the nature of treatment of domestic workers by their employers. It is further explored from the angle that some employers expect domestic workers to perform a string of duties without proper regulations and recognition of their rights that in Busia's analysis gives the impression that domestic workers operate in a slave-like environment owing to the way they are treated by their employers (Busia, 1991:14).

Furthermore, domestic workers do not only face problems of overloading in terms of duties but also most people see this as the genesis of other problems. Busia observes that because they are overloaded with duties, domestic workers are prone to making mistakes such as breaking utensils or being tempted to eat the baby's food and he adds that for these minor misdemeanours they get physically assaulted (Busia, 1991:16). One employer in Malawi burned her domestic worker to death in a such an incident.<sup>6</sup>

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<sup>4</sup> Reynolds classified domestic work as cooking, doing laundry, water collection, sweeping, mopping and child care.

<sup>5</sup> Dube, page 96. In the same book; they claim that girls are cheap, easy to work with, they are easily controlled, and so on.

<sup>6</sup> She claimed that she had eaten her piece of potato without her permission, however it was later discovered that the potato was not the issue but rather she was involved with her husband.

### **Economic background of domestic workers**

There is a close relationship between domestic workers and their economic backgrounds; it is documented that they mostly come from poor backgrounds. In Zimbabwe, girls from poor families are sometimes sent to live with relatives like an elder sister or an aunt to provide domestic labour (Dube, 2000: 96). From this perspective Busia (1991) in Ghana emphasizes the poor economic status of domestic workers as they enter into this type of work.<sup>7</sup>

In connection with the above observation, the prevailing practice in Malawi is that employers source domestic labour from the rural areas; Kwapata (undated) writes that workers are taken from their rural areas where they are vulnerable and have limited knowledge of their rights.<sup>8</sup> It is from this premise that domestic workers are exposed to abuse and exploitation by their employers because they are in a state of vulnerability although the extent of abuse is not established. Busia (1991:17) further observed that employers do not like to employ from the pool of a city's former domestic workers because these workers would have some experience and be aware of certain rights.

### **Gender perspective of domestic workers**

Without empirical evidence, my observation is that there are more female than male domestic employees in Malawi. Kwapata writes that almost 80 per cent of those children taken from rural areas to work in urban areas are girls and that they work in households that range from middle to very low income.<sup>9</sup> While the reasons for this still remain unexplored, in Zimbabwe, Dube (2000) suggests some of the reasons for a similar situation. She finds that female domestic workers are cheap and hard working, they easily take orders, are easy to control, teachable, more docile than boys and they are compliant. Above all, in the white settlers' mind the major reason for the choice of girls was to train them to become future wives.<sup>10</sup>

In Uganda, Ssemanda (1995) gives a confirmation that female domestic workers are indeed easy to give orders to, so easy to control and even more compliant.<sup>11</sup> Although this might be a common development for almost all the female domestic workers, it must however be made clear that sometimes they are a threat to the marriages of the employers, especially if the worker is the right age. Female employers fear that the sexually mature female employees might commit a 'coup d'état' on their households by seducing their husbands.<sup>12</sup>

### **Abuse of domestic workers**

One of the common abuses of female domestic workers is expressed in sexual harassment. Busia (1991) observed in Ghana that as the girls grow up they become subject to sexual harassment from the 'master' and those who visit the home (Busia, 1991:16). Sometimes this develops into a situation where the worker becomes pregnant by the male employer and as a reaction the female employer just dismisses the girl from employment to protect the reputation of the 'master'.

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<sup>7</sup> Busia (1991:16) continues describing them as a group of people that survive on the crumbs from the master's table and that they live in very exceptional household facilities. He adds on the same page that in some instances the workers may share a room with the pet and are never offered the opportunity of formal education, like the other children in the house.

<sup>8</sup> Kwapata was the national coordinator of Malawi Human Rights Youth Network, URL: [www.youthactionnet.org](http://www.youthactionnet.org)

<sup>9</sup> In 'Fighting exploitative child labour', URL: [www.youthactionnet.org](http://www.youthactionnet.org)

<sup>10</sup> Dube, page 96. In footnote 1: There were some missionaries who felt that they trained African girls to sew, cook and launder to create proper Christian wives for African teachers, evangelists and other emerging African elite.

<sup>11</sup> Ssemanda (1995) page 40, *Socio-legal position of female domestic workers under 18 years in the context of the interplay between practice and the law: A Kampala based study*. (During one of her interviewing sessions, one employee sat on the floor and her pose was that of one accustomed to receiving instructions.)

<sup>12</sup> Ssemanda observed that most women could just kick out their female employees for fear that their husbands would take them for wives. Similarly, Dube observed that wives to the white settlers in Zimbabwe were interested in employing young girls and used to retire them by the time they were almost 18 years, the age they perceived they were old enough to get married.

The other manifestation of domestic workers' abuse is seen in the age of the workers themselves. In Malawi, there are reports that children younger than fourteen years old work as domestic workers.<sup>13</sup> Sadder in the reports is the fact that these working children are seldom paid or lowly paid if they do happen to get paid at all. Identical to this situation is that the white settlers in Zimbabwe preferred young female domestic workers, an action that amounted to child abuse on the grounds of age of employment because, as Dube (2000) writes, they used to engage the girls at eight to ten years old and retire them by the age of eighteen. She further identifies one of the characteristics of domestic service as having an age of entry to employment which is very young compared to other sectors (Dube, 2000:99).

The general recognition of domestic workers in their workplace is subsumed within the preserve of the private arena of the employer. This affects the inspection of domestic employers, perpetuating their position of exclusion from other sectors. Ssemanda (1995) writes about domestic workers in Uganda reporting that sometimes they are recognized as relations or as adopted children – sometimes the worker might have been adopted for maintenance purposes.

### **Camouflaging personality**

Because of the employers' tendency to employ camouflaging strategies in the way they would want to relate to domestic workers, the position of workers remains hidden. This exacerbates their vulnerable position because even if they are exploited, no one from outside can come to their rescue as this is generally taken as a private undertaking between members of the family. For instance, if we can go by the ILO convention<sup>14</sup> this becomes a clear entry point for exploitation and abuse of domestic workers.

At this point, I want to recognize this behaviour on two levels. The first one is when employers do not want to be associated with abusing the workers, especially if the treatment is tantamount to abuse and exploitation. In this situation the employers just want to be seen to be providing for the 'worker' as a relative. In such circumstances, it is common to notice that workers are taken as trainees prior to married life. This concept prevailed when white settlers were engaging native Zimbabwe girls as domestic workers (Dube, 2000:97).

The second level is about the sexuality of the female domestic workers. Female employers are sometimes jealous of the sexually blossoming female domestic workers. They fear that the girls might attract their husbands. Gwazantini<sup>15</sup> in Malawi encountered trouble because of this. In Zimbabwe, Dube (2000) made the same observation.<sup>16</sup> The fear was that the white men (their husbands) would begin to focus on the domestic workers. In this case if the employers did not want to follow the societal norm, they tended to engage the services of the worker, hiding behind this camouflage.

In order to confirm this, in the wake of the liberal feminists, female domestic workers are always the most vulnerable because employers tend to prefer their services due to their socialization (Mitchell in Tong, 1989).<sup>17</sup> Complementing Tong's application of the liberal feminist theory to this topic it must be stated that female domestic workers were preferred by the white settlers because they were cheap, easy to control compared to males and they were perceived to be hard workers and compliant (Dube, 2000:96). It is from this premise that these characteristics can be considered as purporting to perpetuate women's oppression and subjugation.

It is therefore evident that female domestic workers suffer unfair and deep-rooted social practices and norms that inform their societies. The gendered roles that continue to locate women in the private arena therefore trigger liberal feminists to challenge the rules and norms in question to emancipate the female domestic worker.

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<sup>13</sup> Youth Action Net. URL: [www.youthactionnet.org/youth](http://www.youthactionnet.org/youth)

<sup>14</sup> International Labour Organization Convention on Minimum Age, 138; the provision is not applicable when a young person is working in a private home.

<sup>15</sup> The employer who had abused a female worker resulting in her death in Blantyre.

<sup>16</sup> Dube, page 96. Employers expected the workers to go and get married by the age of 18.

<sup>17</sup> Mitchell argued that women's condition is over determined by the structures of production and socialization of children.

## Law review

### The theoretical framework governing the study

This study is guided by legislation of Malawi, legislation in Zimbabwe, the ILO conventions and human rights instruments. The constitution of Malawi of 1999 contains the Bill of Human Rights that includes labour rights in chapter IV. This gives the starting point for the argument of violation and abuse of human rights of domestic employees.

### National legislation

Domestic workers in Malawi are protected by the Employment Act; however this Act's relevance to domestic workers is rather limited. Furthermore, the constitution of Malawi is meant to protect everyone from exploitation and complies with some International Labour Organization conventions that purport to protect workers from economic abuse and exploitation.

Despite this situation, the nature of domestic workers' working environment excludes the domestic worker from the legislation's full application. The thrust is that the Act does not take into consideration the special conditions under which these workers function.

#### *Minimum age for entering a contract*

The Employment Act in section 23 (1) protects children under the age of fourteen from employment in the public or private arena. In the course of doing this, the Act goes on to specify employment sectors such as agricultural, industrial or non-industrial undertakings. It further specifies that those aged between fourteen and eighteen should not be employed in hazardous work. Up to this point, there is no mention of domestic work. This might imply that domestic work is non-hazardous, an oversight that has left young domestic workers unprotected. It would therefore be taken that most employers do not perceive this legislation as intended to protect those in domestic employment.

Contrary to section 23 (1) of the Act, the observation is that employers engage the services of young people in various sectors, including domestic service, although without supporting data. On the same note, from section 22 (1) (b)<sup>18</sup> of the Act, experience shows that most domestic employees of school-going age do not go to school, a situation where the legislation is supposed to protect working children better than any other sector.

#### *Labour inspection*

Because domestic work is done in private, the sector automatically becomes excluded from the protection in section 9 of the Act that is offered to the other sectors. In subsection 1(a) and (b) labour officers are allowed to freely conduct inspections in the workplace and in (c) the same inspectors are denied free access to private homes of employers giving them conditions to inspect these homes. This raises two issues: one is that a private home is not considered to be a workplace and secondly that domestic employees are not taken formally to be protected as other workers are or they are not considered formal employees.

The gaps in the legislation result in a discourse that domestic workers perform their duties in circumstances where they are vulnerable and they are exposed to exploitation because the law excludes them.

#### *Evidence of domestic workers' exclusion*

Section 27 provides that employers give each employee a written statement of particulars of employment as a certificate for entering into a contract.<sup>19</sup> However subsection 4 reads to the exclusion of the employers of

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<sup>18</sup> Section 22 (1) states that no person between the age of fourteen and eighteen years shall work in any occupation or activity that is likely to be prejudicial to his attendance at school or any other vocational or training programme.

<sup>19</sup> See section 27 (1-3) of the Employment Act.

domestic workers as it defines an employer to the contrary of those who employ domestic workers.<sup>20</sup> This automatically excludes domestic workers because in most cases employers only have one worker at a time. This development squarely sets the employers of domestic workers as not legally bound to comply to the regulations when they contract the services of domestic workers.

It is from this gap created in section 27 that domestic employees lose the opportunity for equal protection from the legislation. More seriously, employers are given the freedom to engage the services of domestic workers and manipulate them in all aspects of their working conditions.

#### *Protection from economic exploitation*

The Constitution of Malawi protects children from economic exploitation in section 23 (4). In section 31, it further protects employees against unfair labour practices and provides for the right to fair remuneration. These provisions would protect domestic workers if it were not for the tendency for employers to bypass the law.

#### **Legislation in Zimbabwe**

It would appear that Zimbabwe has advanced in terms of how its legislation recognizes domestic work as an institution of employment. The Labour Relations (domestic workers) Employment Regulations of 1992 specify the wages, grades of domestic workers, hours of work and many other details (see annex 1).

In this case, the contract is clear so that the employee accepts to sign the contract from an informed perspective. The regulations further provide an environment for domestic workers to participate confidently in the public labour market that includes the formation of a specific workers' union to represent their interests. In this way they are in a better position to confidently bargain for better conditions of service.<sup>21</sup>

#### **International instruments**

##### *ILO Convention on Minimum Age (Non-Industrial Employment) C60 1937*

In the first place I must highlight that this convention in its original context excluded domestic workers from its application. It was only after its revision and when it was replaced by C138 of 1973 that domestic workers were included and currently domestic workers are protected by this convention.

Blackett (ILO, undated) says about C138 that it revises the C60 as it no longer allows for the exclusion of domestic workers contained in the latter convention and that they are by implication included into the realm of standard.<sup>22</sup>

The content of Convention C138 article 3 (1) clearly provides the minimum age for admission to any type of employment, and by its non-exclusionary nature, domestic workers are among workers that should not be engaged at an age below that specified in the convention.

Most member states, including Malawi, have not ratified this convention; as such their adoption of this one does not bind them at all. It would therefore be important for Malawi to speed up and ratify this convention if employees and particularly domestic workers are going to benefit from it.

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<sup>20</sup> Sub-section 4 reads, for the purpose of section 27, 'the employer means any person, body corporate, who has in their employment at least five employees'.

<sup>21</sup> Domestic workers in Zimbabwe have their union, the Zimbabwe Domestic and Allied Workers' Union.

<sup>22</sup> Source: 'Making domestic work visible: The case for specific regulation', URL: [www.ilo.org/public/english/dialogue/](http://www.ilo.org/public/english/dialogue/)



*ILO Convention on Night Work of Young Persons (Non-Industrial Occupations) C80 of 1946 and C171 of 1990*

These conventions provide that member states need to adopt appropriate legislative and administrative measures to restrict night work of children and young persons under the age of eighteen who engage in domestic work. The inclusion of domestic workers is evidence of recognition of the sector at international level.

*ILO C103 Maternity Protection Convention of 1952*

Blackett (ILO, undated) looks at article 1(3) of this convention as applicable to domestic workers from the understanding that the sector is included within the category of ‘non-industrial occupations’. From this understanding therefore, domestic workers fall within the category of employees that should be protected from maternity implications within their period of duties.

Despite employees in some sectors being protected by this provision through its incorporation into Malawi’s legislation, domestic workers’ are not part of this application due to the gap that is created by section 27 of the Employment Act. This calls for the state to quickly revisit this section so that it considers domestic workers’ employers with those other employers cited.

*ILO C131 Minimum Wage Fixing with reference to Developing Countries*

The provision in article 1 calls states that ratify the convention to make sure that this covers all the groups of wage earners. This implies that domestic workers are included and therefore it amounts to an issue of discrimination if any state does not monitor this sector regarding their wages in relation to the prevailing minimum wages of that country.

However, according to the ILO list, Malawi has not yet ratified this convention.<sup>23</sup> This raises the issue of the state taking part in the economic abuse and exploitation of employees, including domestic workers. In this case, although the Employment Act should take care of this but emanating from the state of non-ratification of the convention, the state is virtually not bound to making sure that this provision indeed protects young employees.

*African Charter on Human and People’s Rights*

Article 15 of the charter talks about equitable and satisfactory conditions of work for everyone and continues to talk about equal pay for equal work. Although this provision does not provide specific occupations for its application and does not even exclude any sectors from its application it must be implied that domestic workers are entitled to enjoy this right.

Because most domestic workers in Malawi are not formally contracted, their employment is regulated by employer’s individual conditions that mostly lack uniformity and legal protection. In this case therefore workers are likely to be denied the right to enjoy satisfactory working conditions provided in this article.

*Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and Protocol to African Charter on Human and People’s Rights on the Rights of Women in Africa (African women’s charter)*

CEDAW, article 11(2)(b) provides for states parties to introduce maternity leave with pay without loss of former employment, seniority or social allowances and the African Women’s Charter, article 13(i) calls states parties to guarantee adequate and paid prenatal and postnatal maternity leave in both private and public sectors.

Although these provisions do not specify the sectors where to directly apply this, the implication comes where

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<sup>23</sup> URL: [www.ilo.org/public/english](http://www.ilo.org/public/english)

Domestic Work forms part of employment from the definitions of employer and employee and automatically they are included in this application. This means therefore that member states must take necessary measures to incorporate this into their legislations that regulate domestic workers.

Furthermore, article 13 (d) of the African Women's Charter calls for states parties to guarantee women freedom to choose their occupation and to protect them from exploitation from their employers. There is no specific mention of which employees are to benefit from these provisions but since some employers engage the services of women domestic workers it therefore follows that this provision protects them by implication.



## CHAPTER THREE

### Methodology and methods

This study began with the understanding that one methodology would not suffice in bringing out all the required information from a subject of this nature. Therefore I employed the following methodologies to ensure that the picture of domestic workers as they interact with their employers, and indeed with the law, would be clear: the women's law approach; the gender and sex perspective; the grounded theory approach; through actors and structures, the human rights perspective and a legal centralist approach.

Before I begin to discuss the methodologies, it is important to give a synopsis of the experiences I had and some preparatory activities I did just before the research began.

Realizing the vastness of the area of study in terms of its geographical distribution, I engaged two research assistants. I thought they were the right choice for the job since they were pursuing their diploma course at Zomba theological College. It was by coincidence of events that one was a female and the other was a male assistant and their selection was purely on the basis that they had accepted the offer.

It was not easy to get the respondents into context, especially the employers. Some were suspicious about this mission. They were worried that we had come to spy on them and that we might report them. Fortunately I had copied the research identification letter and gave it to each of my assistants. It was upon production of the letter that such employers were reassured about our mission. One employer commented:

'Do not just tease us with your questions and you do nothing about the information! These workers shall remain in the same situation...'

#### **Survey of the study area**

At first I surveyed the area of study and mapped out how best to manage it. I chose areas with significant economic variations fitting into three social classes – lower class, middle class and upper class.

The challenge that remained was how to identify households with domestic workers. I engaged the random sampling strategy because otherwise the survey would create alarm among those who may not feel comfortable with being interviewed. The impact of this was that employers who could have deliberately turned down appointments or faked employee's absence to avoid the interviews, were taken by surprise and inevitably participated in the research. Moreover the choice of the households was not biased towards any particular individuals. The beauty about this strategy was that the interview was spontaneous – on the spot after the visit.

#### **Consolidating meetings**

On a daily basis the three of us convened a meeting to share our field experiences. Meetings took place in the evening at my house. For the purpose of uniformity and consistency it was necessary that the three of us visited one location during each particular period until we exhausted it. The strategy enriched our discussion since each of us shared our experiences and together we devised new means of approaching emerging limitations to the study.

#### **Sample size:**

The initial plan was to interview 30 workers and employers. The reality that came about was that I ended up with 30 workers and 26 employers. Other interviewees included officials from the gender department, labour

office and magistrate's court. I also had a group discussion with three officers from Bwalo Initiative.<sup>24</sup> In total therefore the sample size was 62. This total included 36 females and 26 males.

It was necessary to seek information from other structures in an attempt to triangulate what ever the employers and employees had said. It was therefore in order that I visited these officers after we had exhausted the household visits.

## **Methodologies**

### **Putting women's law into context**

In order to ascertain the workers' lived realities and to examine their socio-economic situation in the employment it was important to begin by interrogating domestic workers themselves. Besides the research concentrating on domestic workers whose composition was a mixture of female and male workers, I had to apply the principle of the women's law approach since it emphasizes that the experiences of victims form the point of departure so we have to learn more about their actual lives (Bentzon, Hellum, Stewart *et al.*, 1998).

The importance of this approach was that it enabled me to examine the lived experiences of domestic workers against the existing laws on employment, the country's constitutional provisions on employment and international provisions to see if there is any compliance with the laws in Malawi. This assisted me in determining whether the laws contribute to the abuse and exploitation of domestic workers.

### **Gender and sex perspective**

This research also wanted to establish the gender dynamics of domestic workers and to ascertain whether employers prefer female and young workers as is most often reported. In this respect I employed the gender and sex approach.

Because I was informed by this approach, as the research went on I was mindful of and noted the job distribution among domestic workers with respect to their sex and I tried to consolidate this with the socially-ascribed roles in each case. I was therefore mindful of the societal expectations in relation to roles and responsibilities that are distributed between women and men.

The approach assisted me in determining the hidden reasons for employers' preference of the ages of the workers in relation to their sex and demands because I was able to analyze these parameters from gender perspective.

### **Grounded theory approach**

In order to ascertain whether domestic workers are exploited in their job and considered cheap labour, it was necessary to triangulate their experiences with official data. I also found it necessary to cross-examine the reasons for their lived realities outside this employment through relevant official data. For this, I went to various officials with a view to accessing grounded data and also to triangulating this with the data obtained from the workers.

In the study, I started with the domestic workers themselves and then moved on to official voices on the matter. I began with the social welfare office to get the official view concerning the assertions that domestic workers had made during their sessions about lack of orphan care facilities and structures that sometimes force them to go in for domestic employment. Discussing this in connection with labour issues, the officer had to refer me to the labour office.

The labour office handles issues of employment, however they do not fully pursue matters concerning settling

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<sup>24</sup> It is a local non-governmental organization that works in a wide spectrum, assisting vulnerable people.

disputes that may arise between employers and workers. I was quickly referred to the court where the officer was sure I would get data to support his claims.<sup>25</sup> Further than this the labour office has the wage guide according to the grades of workers. It was here that I verified the underpayment of these workers when I compared the minimum wages with the real wages the workers were getting.

When I visited the magistrate, the observation was the minimal use of the courts by the domestic workers despite several cases to litigate against their employers. He quickly asserted that some cases are dealt by organizations like the human rights bodies, for example. Taking into account that they normally forward cases of this nature to the courts, he suggested that they might complete some cases within their own jurisdiction.

I was prompted to go to Bwalo Initiative, a non-governmental organization that works on human rights issues and women's affairs. I verified that some domestic workers are assisted through their paralegal section. I found evidence of domestic workers who use the organization as a mediator between themselves and the employers.

The significance of the approach to the study was that it enabled me to follow up issues from the actors' perspective. Secondly I was able to follow up issues about domestic workers from themselves to the supporting structures.

### **Actors and structures' perspective**

In the section above, as I pursued my 'grounded theory' I realized that I was also engaging and interrogating the role of the structures already in place and how the actors in those structures perpetrate or alleviate the suffering of the domestic worker. The attitude of the people in these structures is very important if the victims are to be assisted. I made it a point of studying this throughout the sessions I had with the officials. For instance, at the labour office I observed one day that clients were left waiting on the veranda for over two hours unattended, when I was invited in as a colleague, I noted that the official had not been attending to any business. This is an example of one limiting factor if the clients are to appreciate the effectiveness of the prevailing laws to their protection.

The approach was significant because for domestic workers' problems to be alleviated or solved there is need for collective efforts from the government, civil society and non-governmental organizations, employees in the mentioned structures, the workers and the employers themselves. In the same way, I discovered that the attitude and behaviour of the actors plays a significant role in data collection.

### **Human rights perspective**

One of the objectives for the research was to verify socio-economic exploitation and indeed address the dilemma of the issue with regard to domestic workers. To do that it was necessary to examine the lived experiences of the workers against the existing legislation and the prevailing labour conventions and human rights provisions that intend to protect them. It was therefore important to employ this approach as a point of departure in the methodologies. I initially identified the human rights Instruments that informed the study. The challenge however was to identify the relevant provisions that provide answers to the problems faced by domestic workers.

This is significant from the perspective that it enabled me to analyze domestic employment laws in terms of their compliance with the labour conventions and international human rights laws. As stated, this approach is a starting point in a study like this one.

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<sup>25</sup> The labour officer claimed that the department work in liaison with the courts as they handle straightforward cases and if the parties are in gross disagreement then the cases are referred to court.

## **Legal centralist approach**

This research expected to give an answer as to whether Employment Laws in Malawi are inadequate in regulating domestic workers. From this footing, it was important that I considered formal law as the only answer to the problems faced by domestic workers. I examined the laws with a view to appreciate if they indeed regulate the domestic employment. I did that by reading through the laws and interrogating the law officers in the Labour Department and the Court.

I then gave insights of the employment laws and Human Rights provisions to the employees and the employers for them to appreciate what is expected of them when they are in the employment business. At this point I sought respondents' opinions as to whether they perceive the law to be adequate or there is a need to amend it and quizzed them on their understanding of the use of formal law alone in resolving matters surrounding domestic employment.

The approach was useful because it was meant to level the playing field for both parties to understand that formal law is the only solution to address problems experienced by domestic workers and their employers and take this as a departing point when tackling domestic issues.

## **Methods of data collection**

The methodological diversity that was employed in the study allowed me to diversify the methods of data collection. This had an impact on the nature of the data. Initially it appeared that the data would all be qualitative, however owing to the varied methods the data was both qualitative and quantitative. This mixed data is powerful because quantitative data presents statistics, whose limitation however is that it does not incorporate the voices of the respondents. On the other hand the qualitative data is significant in the sense that respondents' voices are captured which is a powerful element in grounded research of this nature.

The actual interactive behaviour in data collection involved in-depth Interviews with the employers and workers as the key respondents. I also employed interviews with the officers in government departments and non-governmental organizations.

### *Research guide*

I used open research guides just to bring the respondents into context. Guides were structured to persuade respondents to give out information without limitations as required in grounded research. In other words the guides were open-ended and focused (see annex 5).

### *Orienting research assistants*

It was necessary to orientate the assistants before the actual work started. I conducted the session three days prior to the real work. I emphasized that they were asking respondent's for a favour in asking them to participate in the exercise and therefore they needed to respect their time. I also emphasized the need to conduct the interview in an open and friendly atmosphere putting the respondent's feelings above everything.

Finally we went through the guide together to get them familiar with the contents and also to standardize the questions in the guide so that the three of us understood the questions from the same perspective.

To ensure that sessions in the field were progressing as expected, I planned to have evaluation sessions on a daily basis. These proved important because we were able to compare field experiences and, where needed, to adjust the guide or decide which respondents we needed to revisit.

## **Demarcation of the area of research**

Basically I screened the area of research through economic lens with respect to economic standards of people in the areas. I identified three areas:

### *1 Chikanda*

This area is a combination of slums and a 'location' of the municipality. The people who live in this location have diverse lifestyles. Some are vendors in town, others brew *kachasu* (Kalua, 2004). Some inhabitants are employed in lower offices in government, at the university and in other small-scale industries and businesses; of course, they are generally those whose income is relatively low.

Most people found in this location are at the level of messengers, primary school teachers or clerks. The overriding factor is that this area is semi-rural in as far as the lifestyle is concerned; therefore issues of accommodation and cost of living are not as serious as in other locations. In other words the location may be referred to as 'lower class'.

### *2 St. Marys*

This location is occupied by the middle-managers of the commercial banks as well as those who work in government. Most of these are part of an organized community befitting the middle-classes. Most inhabitants here are middle-class.

### *3 Mulunguzi*

This is a low-density area whose inhabitants are the élites who work at the university as professors, doctors and those highly placed in the government departments and commercial banks, including the Asian community. This area is generally an area of 'upper class' people.

The study demarcated this area so that the experiences of domestic workers in these areas are compared based on employers' economic status and educational level that presumably may have positive correlation to their levels of legal and human rights literacy.

## **In-depth interviews**

The study took place through in-depth interviews. The sessions were done at the respondent's home where the domestic workers were working.

The initial challenge was how to break the topic during one's visit because it was never expected that their conditions of work would be a concern, at least as was evident in the trial sessions after orientation. It was a 'take it or leave it' situation, once again we used the research identity letters to convince respondents that we were not spying on them.

The other challenge was to put the respondent into context, especially the workers. Some employers were uncomfortable with the arrangement to interview the workers in their absence. The obvious fear presumably was that the workers would be free to clearly indicate their experiences. Although not all employers said this, their facial expression and gestures would show that they were not willing, however we took our chances.

The third challenge in the interviews was to get respondents into conceptual context. The majority showed ignorance of human rights issues, let alone the employment laws. Out of the better few, some could still not appreciate why there should be concerns for domestic employees, especially considering that their employers do not address their own problems. Such observations were common, especially among those government employees suffering salary stagnation.

I devised a strategy where I had to convince them that the premise for this research was purely for academic

purpose and it had nothing to do with putting its findings into operation. At that, respondents became freer and started responding.

There were perpetual problems with the domestic workers; most of them had difficulties in understanding the questions, especially those who were very young. Nevertheless the approach was that we defined the words carefully and stated what informed the question in the vernacular to move forward.

Despite the challenges I have explained above these interviews yielded a lot of data useful for the triangulating process.

### **Individual Interviews**

As part of an inductive research in grounded theory, I engaged individual interviews with the government officials in the departments of social welfare, labour and the courts. I interviewed one officer in each institution – apparently all were males. One reason for this I realized was due to their areas of expertise as was the case at the social welfare department where a female officer referred me to her male counterpart saying that he was the one with vast experience in the issue of orphans.

I noted elements of lack of confidence and reliance on male co-workers to act as spokespersons. I also noted that there was an issue of unequal power relations at play; this female officer was junior to the male officer so it may have been out of respect that she referred me to him.

However, this was significant because I had expected to source a particular type of data from these institutions and therefore it made it easier to plan the work. This approach also gave the respondents a chance to prepare for the responses since I booked the visits well in advance.

### **Group discussions**

Initially I had no intention to have sessions of group discussions. However when I visited the Bwalo Initiative, the interview that I had booked with the director turned out to be a discussion because some officers showed some interest in contributing.

All those who were involved in the discussion were male officers. I adjusted my approach and allowed it to continue as a discussion. This group discussion was more fruitful because participants were free and they did not feel threatened. Opinions were flowing freely without necessarily triggering them with questions. More significant was the fact that the approach encouraged participants as views were emerging in a more general manner.

### **Observation as a method**

I employed passive observation throughout the study. This was due to the practice of us being treated as visitors in most households.<sup>26</sup> This approach was significant in the sense that it was possible to read the hidden messages within the respondents, for instance, some employers were not comfortable when asked to allow the worker to talk in private.

In one case I observed this female worker working non-stop while the rest of the members of the family were just relaxing, there were some male domestic workers who were working outside the house, for the two hours I stayed there I could see them having snap breaks as they were not supervised. In the house the female cook was working under close supervision of her female employer. The latter constantly visited the kitchen while commenting that;

‘If I leave her alone the food may not be prepared the way I want it to be.’

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<sup>26</sup> ‘Traditionally people would not allow their visitors (us) to participate in the activity they were doing, especially in this research where, if anything, we were to join domestic workers in the kitchen or laundry; certainly they would not permit us to do that.

Generally this method contributed significantly to the study because it allowed me to record the events that might not have come out clearly in the formal interview.

### **Limitations of the study**

- Most employers hurried us through the interviews claiming that they had tight schedules at their work.
- Some employers were never available despite continued visits made to their households.
- It was difficult in some cases to get successful appointments with some officers. In this example I had planned to interview one human rights officer at the Youth Net and Counselling but he kept postponing the meeting until I left. They were running an interesting project on socio-economic support of vulnerable persons around Zomba and I thought it was pertinent to seek their views on my subject.
- The language gap caused some hiccups in the study. I had planned the interviews to be flexible in terms of language use; however I overlooked the fact that the area of study fell in the urban area where there are mixed vernaculars. My focus was narrow because I only considered the national vernacular but the implication of this was that some of my respondents could not understand Chichewa properly.
- While I appreciated the field supervisions, I feel the period of contact with the supervisors was rather inadequate. I think it should have been sufficient to include some domestic supervisors who would be in a position to give instant advice on the prevailing national legislative provisions and other academic advice in matters of research.



## CHAPTER FOUR

### **Research findings and data analysis**

This chapter presents the themes that emanate from the assumptions that informed the study. The key themes included in the findings are:

- reasons for seeking domestic employment;
- employees' wages;
- age and sex preference in employing domestic workers;
- domestic workers as a source of cheap labour;
- exploitation of cheap labour; and
- inadequacy of the employment laws in regulating domestic work.

#### **Reasons for seeking domestic employment**

##### **Lack of employment opportunities in formal public sphere**

To avoid any contradictions, unemployment in this section refers to the unavailability of employment or jobs that school leavers recognize as worthwhile after completing their formal education. It is estimated in Malawi that almost 90 per cent of those aged between 15 and 29 are unemployed (Malawi Human rights Youth Network, undated). In so far as domestic work qualifies as employment, however, at the time of the research it remained the 'other' category of job that would hardly absorb those school leavers.

Two female domestic workers, Esther Chikola and Judith Chauluka reported that they had come to work because they had failed to secure appropriate jobs. They both have qualifications that should have secured them jobs in the public as well as private sectors.

It is interesting to note that both of the victims of unemployment are women from this small study. Esther, who was by then working in Mulunguzi, she gives her account:

'I completed my education in 2003 and I have a full Malawi School Certificate of Education. Since then I have been trying to get a job, any job in the government but I have not been successful...'

This could be a common experience for most school leavers in Malawi. For instance, recently over 6000 applicants were invited for police recruitment interviews in the eastern policing region alone but the whole exercise would only absorb a total of fewer than 2000 recruits. Candidates who are invited mainly have a good Malawi School Certificate of Education. The government has not been recruiting teachers, a department that absorbs a lot of school leavers who do not go in for further studies at colleges requiring self-sponsoring.

While we appreciate that education correlates with participation in the labour market as King and Hill had demonstrated (UNDAF, 2002–2006), it must be noted here that lack of opportunity to get a suitable job on the market is a violation of human rights. Asbjorn argued that if the internationally recognized human rights in their entirety had been fully implemented, poverty would not exist (Asbjorn in Genugten and Bustillo, 2001). It is along these lines that I further argue that it is only if individuals have received appropriate education that King's argument would be meaningful considering that domestic workers are experiencing the contrary. I still presume that it is because of the type of curricula or the education system that does not prepare individuals to attain a level of independence. It is therefore along this line of thinking that if school leavers were trained through a vocational curricula, they would be able to be self employed.



In line with Asbjorn's argument, by ratifying to the protocol to the African Charter on Human and People's Rights on the Rights of women in Africa Malawi guarantees women de jure freedom to choose their occupation but the working policies on the ground are contrary to the protocol's article 13 (d).<sup>27</sup> Further to this, section 29 of the Malawi Constitution<sup>28</sup> holds that the state should comply with the provisions in article 13 (e) of the protocol on the rights of women in Africa, where states parties are called to create conditions to promote and support the occupations and economic activities of women. It is therefore in the absence of compliance with the said articles that one wonders how women would compete on the job market and realize their career advancement.

### **Divorce**

Four female domestic employees reported that they had been divorced and consequently they had to go into domestic employment. Dorothy Senda (32) was working at St Marys at the time of this research, when I asked her and she had this to say:

'I got divorced and my husband left four children under my care. Life has been difficult, almost impossible trying to do this business and that but no success, I did not have capital, and then I decided to look for work in people's houses.'

Within the same location of St Marys, Maria Bernard (33) tells her story:

'Since I got a divorce, my husband left this area and never came back or sent any assistance for his children. I have problems to finance the livelihood of the children and no one is ready to assist, at last I decided to come and work as domestic worker.'

These two stories are a clear testimony that women are suffering from informal divorces where the husbands break free and are never obliged to maintain their children or their wives. According to the magistrate at the court, the formal divorce is through the court; however it would appear that most women do not bring their cases to court, especially those that come from the villages. The magistrate said this:

'...most of the women do not come to litigate against their husbands who are divorcing, it is only when they have been sensitized normally through the welfare department as they seek assistance for their children's education that they now would come to open up a case against their husband, however these cases are rare.'

This practice is a gross violation of the provisions in article 7 of the protocol on the rights of women in Africa that calls for states parties to ensure that in cases of separation, divorce or annulment of marriage, women and men shall have reciprocal rights and responsibilities towards their children. While these provisions are domesticated through section 24 (1) b (ii) of the Malawi constitution,<sup>29</sup> it should be argued here that sometimes knowing your rights to claim maintenance is meaningless especially to those who have no property. Bustillo had earlier argued along the same lines as he wrote:

'What difference would recognition of right to property make to those who poses nothing...'  
(Genugten and Perez-Bustillo, 2001).

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<sup>27</sup> Article 13 (d) of the protocol calls for states parties to guarantee women freedom to choose their occupation and to protect them from exploitation and violation of their fundamental human rights by their employers as recognized and guaranteed by conventions, laws and regulations in force.

<sup>28</sup> Section 29 provides that every person shall have the right freely to engage in economic activity, to work and to pursue a livelihood any where in Malawi.

<sup>29</sup> Women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status, which includes the right on the dissolution of marriage to fair maintenance, taking into consideration all the circumstances and, in particular, the means of the former husband and the needs of any children.

Listening to the experiences of Dorothy and Maria above, I realize that although states strive to ratify International Instruments, the most important thing is to ensure that these laws get down to the people because there is a gap in what the law requires and what the people are doing in practice. Looking at husbands who abandon their wives through gender lens, I am forced to make an assertion that men have envisaged the caring roles of women and they think women therefore have accepted the burden of bringing up children as single parents.

## **Orphans**

The level of orphans is increasing in Malawi due to the HIV/AIDS pandemic that has grossly affected the country. According to the UNICEF report of 2003, the rate of infection was pegged at 14.4 per cent within a population of people in the age group 15-49 and statistics show that 267 persons get infected daily, bringing the death toll of HIV/AIDS related infections to 139 on daily basis (UNICEF, 2001).<sup>53</sup>

From the sample of 30 domestic workers, nine had reported that they were orphans and that they were unable to look after themselves. Comparatively, however, female workers in this situation were more evident than male workers. Despite this, the statistics do not have real significance because there were five female workers and there were four male workers. This variation may still be significant especially looking at the gross sample size of thirty workers, it would be deduced that most male orphans do not enter into domestic employment, a situation that would trigger a gender argument. This assertion may have its substance in the testimony that was made by Fanny Kapalamula, a 14 year old girl who said:

‘My parents died and the relatives I lived with were not ready to finance my education, then I dropped out in standard four. I could not cope with the life at my uncle’s place because he was just cruel to me. I decided to come to town to look for employment.

Some orphans are forced to play the role of child parenting. The practice overstretches the orphans as with Ethel Chinangwa (24) who describes her experience:

‘I used to live a good life before my parents died. Now I have lots of responsibilities to look after my young brothers and sisters, they all depend on me and I have no option other than to continue working since I have been doing this for the past five years.’

Some orphans are adopted by neighbours or relatives but the problem is that those who adopt them don’t seem to know the guidelines for child adoption. Despite welfare department providing standard guidelines for child adoption, people continue to practise local adoptions, as it were, in their villages. It is at this level that orphans end up with a substandard quality of life and sometimes they are exposed to a kind of slave trade as is seen in the case of Gift Limbani, a 15 year old boy who was working at St Marys. He gave his account that after his parents passed away, he was adopted by a village mate. The grandmother whom he stayed with was very old and she was just too poor to support him. The new parent decided to pass over the responsibility of adopting this boy to her daughter who was in town. According to him he said that now the living conditions changed into a servant from an adopted child. He however claims that through this work he is able to send money to his grandparents.

The district community development officer at the welfare office for Zomba confirmed that such cases are common because of lack of information concerning standard adoption; the local people are not provided with proper guidelines for child adoption. The other problem is that there is inadequate availability of formal orphanages across the country. Arguing from this latter point, it is therefore a limitation on the government’s part as it is responsible for taking care of the orphans and other vulnerable children since it ratified the African charter on the rights of the child. Using the charter, article 25 (2) and the Convention on the Rights of the Child article 20(1) to analyze the situation in Malawi and in particular the situation of the cases studied,<sup>30</sup> it reflects a lack of adequate structures that are aimed at caring for the growing numbers of orphans, and lack of political will in this case; the state is perpetuating the suffering of the orphans by forcing them into domestic employment.

The other factor is about the erosion of the socio-cultural values that continue to prevail in Malawian society. Most Malawians used to live in an extended family relationship earlier – the before colonial era. The impact of colonialism was the change in the family values and everyone seems to be moving towards living a nuclear family that hardly accepts adoption of orphans.

### **School drop-outs**

While there are several reasons that might have prompted the workers to drop out of school, the study was concerned with the reasons pertaining to maternity.

Out of the 30 domestic workers who were interviewed, three indicated that they had initially dropped out of school because of pregnancy. Because they had missed the chance to get married to the men, they then could not get assistance for themselves and the babies and so they found themselves in domestic employment.

Celina Kaudzu (34) works in Mulunguzi area. When asked about the reasons that made her take up this employment, she quickly recalled her experiences and had this to report:

‘I dropped out of school in standard eight because I fell pregnant. The man assured me of marriage but later changed his mind after I had given birth. I could not go back to school; it was not as is the case these days.’

In a related experience, Joyce Kunje (25) reported a similar situation; she got pregnant when she was in standard five. She recalls that since she was young, the man did not marry her and her parents did not support her to get back to school. She came to town to look for a job and she claimed that she had been working for the past ten years.

Mary Chimtengo (24) when asked about the subject, gave the following account:

‘I was doing my secondary education, as I was in form one, I got pregnant and I got married. Later I was divorced, now here I am left with the burden of caring for the child. I had nothing to do except to come and work.’

One possible argument for these experiences is that the government has been delaying in domesticating international provisions that purport to ensure equality of women to men in education. Article 10 (e) of CEDAW provides that states parties ensure that there is no discrimination against women to ensure the same opportunity with men to access programmes of continuing education and reduce the gap in education between men and women.

It is however important to mention that those who experienced this had done so well before the government had adopted the back to school policy where pregnant girls are allowed to rejoin school after they have given birth (this was adopted in the 1990s). This is evidence enough of the delay because the government had ratified CEDAW in 1987. It might not be surprising therefore to note that from the cases studied that no positive effect is evident yet since there are still domestic workers who have joined the profession because they fell pregnant and were later denied the option of returning to school. Although this development cannot be representative owing to the narrow focus of the study,<sup>31</sup> if the pattern of events remains true across the country, then the policy in future can be rated as a success and school drop-out cases can be attributed to other reasons.

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<sup>30</sup> Article 25 (2) of the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa states that party states are to ensure that parentless children are provided with alternative family care and article 20 (1) of the Convention on the Rights of the Child states that a parentless child is entitled to special protection and assistance to be provided by the state.

<sup>31</sup> The study only covered Zomba municipality.

## Poverty

Although this term can be relative, poverty is discussed in this paper in relation to the perception of a poor person as described in the *Malawi poverty reduction strategy paper*. The perception is that a poor person is someone who is living on below Malawi kwacha 10.47 a day (equivalent to U\$0.01 in 1998) (Malawi government, 2002). According to this report, 65.3 per cent of the entire population was rated poor and 28.2 per cent was pegged as living in dire poverty (Malawi government, 2002:5). In the same report it was given that 66.5 per cent of the rural population lived in poverty against 55 per cent of the urban population in 1998. These findings support the phenomenon in this paper whereby almost all the employees indicated that they had migrated from the rural communities where poverty is increasing pressure.

This research recorded a total number of 13 workers who indicated that they had come to work against a background of poverty. Out of the 13, nine were female and four were male workers. This indicates the impact differential in terms of how poverty affects women and men and probably how the two groups cope with it.

Julius Maida (25) comes from Machinga district, a neighbouring district to Zomba. He reported that his mother is the head of the poor family in which he grew up. He said that when he realized that his mother was struggling to keep them going, he decided to leave school and help her. He dropped out in standard eight back in 1994 and he came to town to work. Julius indicated that although he was working in this type of job, he would have liked to go back to school but he quickly pointed out that it was possibly too late at his age.

Joyce Malizani is another worker whose case is similar to Julius' and she presented her case as follows:

'Basically I come from a poor background, my parents could not provide us children with a sleeping place or bedding and even food is difficult to get at home. With these challenges I decided to come and look for employment, I had to sacrifice my education and I hope I will go back to class.'

Luke Holoiswa is another worker who claimed that his parents were very poor so he decided to withdraw from school just as he was to start secondary school because his parents could not afford to finance his education.

Article 18 (2) of the Convention on the Rights of the Child provides for states parties to provide parents with appropriate assistance in the performance of their child-rearing responsibilities and should ensure the development of institutions, facilities and services for the care of the children. Taking the workers' experiences into account, it is clear that the provision is not grounded and has no impact on the lives of the people, which is evidence of the state's failure to practise its obligation.

Articles 20 (2) (a) and 25 (2) of the African Charter on the Rights and Welfare of the Child provide for states parties to provide assistance to children who are unable to get appropriate help from their parents with a view to them continuing to enjoy their rights. At a glance, it would be tempting to simply believe that Malawi is ahead on issues of children's rights purely based on the fact that it has ratified this charter. The lived experience contradicts the paper work plans that outline strategies to alleviate children's problems. For instance, in 2002, the *Malawi poverty reduction strategy paper* was finalized and the government is presumably in the implementation stage. However the prevalence of poverty is on the high rather than the low side as would be expected. This manifests itself when the gap between the rich and the poor continues to widen and the question that one would ask is what does it mean to have good and flowery provisions when the poor even fail to access loans as they try to relieve themselves from their poverty?

The constitution of Malawi provides in section 29 that every person has the right to engage in economic activity and pursue a livelihood anywhere in Malawi. Despite this supreme provision most people in the country appear to be far from realizing this right, considering that they do not even have the power to engage in such economic independence; owing to their poverty they do not meet the requirements for loan facilities.<sup>32</sup> This phenomenon exacerbates the exploitation of domestic workers, especially women workers, who are in the majority.

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<sup>32</sup> Government's driven loan facility, MARDEF, demands long-winded bureaucracy that an ordinary Malawian would not pursue.

## Domestic workers' wages

One assumption in the study envisaged that domestic workers are in such contracts because employers consider them to be an alternative cheaper source of labour compared to other forms of labour that might be relatively expensive for the same work. The findings under this section are informed by the following themes:

- low wages;
- employers' economic position; and
- weak bargaining powers.

### Low wages

*Table 1: Prevailing wages compared around the minimum wage at the time of the research: by sex*

Location	Those getting below MK2725		Those getting equal and above MK2725	
	M	F	M	F
Chikanda	1	8		
St Marys	2	7		1
Mulunguzi	6	4	1	
Totals	9	19	1	1

### Interpretation

At that time, 2725.00 Malawi kwacha was almost equal to US\$22. This was the working minimum wage figure for the lowest paid workers and not specifically for the domestic workers in Malawi by the year 2005.<sup>33</sup>

This minimum wage forms the baseline wage that informs whether some employees are lowly or well paid. In essence when I refer to a low wage or lowly paid I simply compare the wage to this minimum wage. I should mention here that the wage includes a housing allowance.

The findings in the table reveal that nine workers were getting below the recommended wage of US\$22. at Chikanda and St. Marys. The statistics show more female workers than male workers were subjected to this low wage owing to the fact that there were more female workers than male workers in the study. Only two workers from the cases studied show that they were receiving more than the minimum wage, one from St Marys and another from Mulunguzi.

The situation at Mulunguzi was different, the table shows that more male workers were subjected to low wages there than the female workers.

Holistically, out of the 30 workers, 28 were getting lower wages than the minimum wage against two workers getting equal or more than this wage. Comparatively 19 female workers were on the lower wage compared to nine male workers. This gender disparity shows the manner in which this wage issue might impact on the women and men's lives. Obviously more female workers would be struggling to earn their living compared to men.

Watkins argued that low wages and insecure employment lead to low productivity and high absenteeism (Watkins, 1995). It was within this context that I discovered from the magistrate that a lot of employers come to file theft

<sup>33</sup> Minimum wages quoted from the labour office.

cases by their servant as opposed to workers filing cases of employers exploiting them. I am therefore tempted to make a case that some domestic workers resort to stealing their employers' property to compensate for the low wages they get in exchange for the hard labour they perform.

Watkins further argues that flexible labour markets are socially unjust because they involve highly exploitative labour practices, he raises a case that in 2000, the trade unions in Malawi had found out that house servants were paid US\$2 and US\$3 in a month instead of US\$12. and US\$17, the statutory minimum wage (Watkins, 1995). The prevailing situation of domestic workers shown in the study may emanate from the fact that there are no structures to check employers' exploitative practices as they operate in a more liberalized labour market.

I was interested to find out from the workers if after the sessions I have had with them they would bargain for higher wages if given chance. The table below gives the statistics of the responses about the workers' aspired wages categorized by sex.

*Table 2: Workers' proposed wages by sex*

Location	Those who accepted < MK2725		Those who preferred =/ > K2725	
	M	F	M	F
Chikanda		7	1	
St Marys	1	5	1	2
Mulunguzi	2	1	4	3
Totals	3	13	5	6

These findings indicate that most workers do not hope for higher wages. Out of a total of 16 respondents who attempted this question, 13 females and three males proposed figures below the minimum wage.

Eleven workers proposed higher wages than the given minimum wage, five male and six female workers. Of significance is the fact that workers from Mulunguzi constituted the highest on aggregate followed by those from St Marys and then those from Chikanda.

The findings above can be explained by the fact that employees at Mulunguzi presumably have responsibilities owing to their social status as most of them are responsible for their families or children.<sup>34</sup> This situation informs their expectations in as far as the wages are concerned, as opposed to the workers engaged in Chikanda.<sup>35</sup>

Studying the findings in table 2, it is clear that most domestic workers accepted wages below the general minimum wage level that was in force during the period of the research. Malawi's Employment Act, section 54, however, sets the state an obligation of coming up with minimum wages for such earners. I must clarify here that the argument is not that domestic workers should be paid minimum wages but that in the prevailing situation where most workers are getting lower than this wage, this minimum wage becomes a reference point.

The Act further spells out the formulation of minimum wage procedures in section 54(3)(a).<sup>36</sup> It is from the premise that their representation in the form of a specific union is vital for domestic workers to present themselves in such forums and decide the factors that determine their wages.

Table 2 again shows that most female workers interviewed are getting low wages – 19 of the female workers

<sup>34</sup> Most of them are in their thirties and most of them indicated that they look after their children from different backgrounds

<sup>35</sup> Most workers at Chikanda are younger than 18 years, presumably they do not have direct responsibilities, save for the few who have the burden of caring for their fellow orphans.

<sup>36</sup> The cost of living is considered and this is discussed with the organizations in question..



compared to nine of the male workers. This is evidence of unequal power relations at play between the employers and workers and female domestic workers against male domestic workers. One assertion I am making is that probably some male workers negotiate their wages and decide to leave it if they do not agree; they can resort to other economic activities.

The constitution of Malawi in section 29 provides that everyone has a right to engage in economic activities, to work and to pursue a livelihood anywhere in Malawi. In pursuance of this provision the state has an obligation to protect employees, including domestic workers. On the contrary female workers, owing to their vulnerability, presumably may not have equal bargaining skills to those of male workers and consequently they are at the mercy of the employer. This argues for the need to protect female domestic workers from economic exploitation by their employers through domesticating article 13(d)<sup>37</sup> of the Protocol to the African Charter on the Rights of Women in Africa.

The table below shows the employers’ preferred minimum wages in a quest to contribute to better working conditions for domestic workers:

*Table 3: Employers’ proposed minimum wages by sex:*

Location	Those proposing < K2725		Those proposing => K2725	
	F	M	F	M
Chikanda	3	4	2	
St. Marys	4	1	3	1
Mulunguzi	1	2	5	1
Totals	8	7	10	2

Most employers indicated that they would have gone for the minimum wage of less than Malawi kwacha 2725 as at that time. At least 15 compared to 12 showed the preference as illustrated in the table. On the other hand more female employers indicated the minimum wage should be above Mk2725; I believe that this comes from the fact that female employers have experience in the nature of the job itself and therefore do not hesitate in giving it adequate economic recognition as they would certainly appreciate the significance of domestic work. While this could be a valid argument for this pattern, some female employers, especially from the lower class, said that the minimum wages need not to be so high because workers do not buy food or pay rent and they benefit a lot from their employers. I will reiterate my argument that if the regulations were spelt out in black and white, the domestic worker may still suffer the low wages should they choose to, but ultimately they could at least make an informed choice.

**Employers economic position**

Two employers indicated that the low wages are due to the fact that most employers themselves are in a poor economic positions. One of them commented:

‘It is good that domestic workers’ rights need to be respected, however on the issue of their wages it is due to the low salaries that some of their employers get, so we look like abusing and exploiting them.’

This employer might have represented a popular reasoning behind most employers. However my argument is that if employers recognize the rightful age for workers to enter into employment, surely they should also know

<sup>37</sup> Article 13 (d) of the protocol to the African charter on human and people’s rights on the rights of women in Africa calls for states parties to guarantee women freedom to choose their occupation and to protect them from exploitation and violation of their fundamental human rights by their employers as recognized and guaranteed by conventions, laws and regulations in force.

the rightful wage to pay these workers. Building on this argument I am making an assertion that employers need to recognize domestic workers' needs for their basic life as is provided for in section 54 (3) (a) of the Employment Act of Malawi.<sup>38</sup>

Another employer had this to say:

'The economy of the employer is the determining factor to the improvement of the domestic workers' salary.'

Although economic status is subjective, surely there are some social categories whose status does not betray their class. The question is what good reasons would the upper class give for the low remuneration package if not only purporting to perpetuate exploitation? Table 1 above is a manifestation of my assertion – only one worker was paid above the minimum wage from the upper class category.

### **Employers' sex and age preference for their domestic workers**

The other question this study was striving to answer was whether employers prefer to engage the services of female workers and those of 'children'. Underlying this theme are a number of issues that the section is discussing and these are; gender roles; customs; maturity; workers' basic education and the legal employable age.

#### *Gender roles*

Table 4 shows the number of employers who preferred female domestic workers because of their gendered roles:

*Table 4: Employers' preference for domestic workers by sex:*

Location	Preference for gender roles by sex.	
	M	F
Chikanda	3	4
St. Marys	1	6
Mulunguzi	4	2
Totals	8	12

The table shows that 20 employers had indicated that they preferred female domestic workers.

More female employers indicated their preference for female rather than male employees. It can be noted however that most employers in the high density areas and those in the lower class have indicated their strong preference for female workers. Most of them said that female workers are experienced; they work better than male workers. Others said that female domestic workers are easy to work with and that they understand easily when giving them orientation. Those that have babies said that females are good because they are used to caring for young babies and children and that they are not a threat to the girl child in the family as there is no risk of sexual abuse or rape.

Examining the reasons that have been cited, it is clear that domestic employment is still a preserve for females and that men are given more space in the public arena as opposed to women. Through this distribution, it is also clear that some women do not appreciate that male workers can do better in the private sector.

It is evident that employers from Chikanda and St Marys showed an interest in female workers; coincidentally

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<sup>38</sup> That says that in prescribing the minimum wages, the minister shall as far as possible consider the needs of workers and their families, the cost of living, social security benefits and the relative living standards of other social groups.



they are the group that has engaged more workers in their teens. I suspect that it is on the grounds of economics that these employers need someone to share accommodation within their house because they want to avoid paying housing allowances. The second reasoning is that of sexuality – if male workers share the house with the girl child then the latter may become subject to rape and other sexual abuse.

This brings in an argument of discrimination against the vulnerable; the employer finds it conducive to expose the worker to sexual abuse at the mercy of the male children or sometimes from the husband but works to protect their own family from such abuse.

Seven employers said that they prefer male domestic workers because they are hard working and always do multiple jobs – referring to inside and outside jobs. One female employer indicated that she prefers male workers because she is always suspicious about the relationship that comes about if she employs a female worker, since she believes that some female workers come to ‘snatch’ husbands.

Another employer said that boys are good because they are bound to stay longer in employment, attributing this to the fact that female workers do not take long before they get married. However, this employer supported the employment of female workers claiming that it is a merit on its own since certain work is better done by female employees and also that they are easy to train.

The other female employer, in trying to justify her preference for male workers, said that female workers are pompous and do not understand issues but she could not elaborate.

In all the latter cases, the employers are influenced by the preconception that men are physically strong and they capitalize on this characteristic to discriminate against female workers. This is contrary to article 13(d) of the Protocol to the African Charter on the Rights of Women in Africa that calls for non-discriminatory practice in as far as guaranteeing women their freedom to choose their occupation is concerned. I am hereby arguing that traditionally, it is the women who perform all domestic work including chopping firewood and how can it then be a justified course of action to discriminate against them when it comes to doing the same work when it attracts wages? Employers from Mulunguzi have demonstrated this as they preferred male domestic workers and offered them better wages compared to employers in the other locations.

*Workers’ ages*

Within the same area in question, it was sought to verify whether the age of domestic workers matters in employers’ choice of workers. The table below shows the prevailing age distribution of domestic workers who were interviewed, categorized by sex during the period of research.

*Table 5: Age distribution of the workers by sex*

Workers aged:	less than 14 years		14 to 18 years		above 18 years	
	M	F	M	F	M	F
Chikanda			6		1	2
St. Marys		1	3		2	4
Mulunguzi					7	4
Totals		1	9		10	10

The findings in table 5 indicate that most employees who were interviewed were more than eighteen years old. It is worth noting that there were more female workers within the age group 14 to 18 than male workers. In the table it shows nine against one respectively.

More significant is the observation that the majority of employees aged above 18 were from Mulunguzi with

more males than females.

Despite the prevailing practice, most employers indicated that they consider the age of eighteen to be ideal for domestic workers to enter the profession. The reasons for their preference are that they are mature and experienced in doing such work in their homes. Others attribute their preference to the consideration that at this age it is most likely that they have completed basic education and that they might have good reasons why they are not in school. This age coincidentally is the one recommended by the ILO convention C138 on minimum age of employment. The age 18 is further considered suitable for any work without considering the hazards of the work. This indicates that some employers are aware that domestic employment has implications for the workers' health, development and education pursuance especially if an employer engages a child. In the same vein, Blackett interprets C138 as including domestic workers by implication in the standard minimum age.<sup>39</sup>

*Proposed minimum age of entry into domestic employment*

When asked to contribute to the proposed conditions of work for domestic workers so as to answer some inadequacies in the employment legislation, both employers and workers proposed the ages shown in table 6 as minimum ages for entering domestic work.

The table below shows the varying views on the minimum age of domestic workers at the time they should enter into the contract.

*Table 6: Minimum age proposed by workers and employers by sex*

Location	Views from workers				Views from employers			
	below 18 years		18 years and above		below 18 years		18 years and above	
	M	F	M	F	M	F	M	F
Chikanda		5	1	2	2		2	4
St. Marys	1	1	1	5				7
Mulunguzi		2	6	2		1	4	5
Totals	1	8	8	9	2	1	6	16

In general terms there were more female employers and employees who indicated that the minimum age should be 18 years. Other employers indicated that because of the nature of the employment, it surely needed someone who is mature to avoid disturbing their development. The magistrate said:

‘When young workers are employed there is fear of power differences between the employer and the worker owing to a wide generation gap, owing to an economic gap and to the notion of employer-servant relationship. These factors coupled together subject the young worker to a scenario where they may not advance any idea with a view to negotiating for their rights. On the contrary, I think if elderly persons are employed they may stand their positions and negotiate firmly.’

On the other hand, more workers, especially those from lower class households, indicated the recommended age as below 18 years. Within this category, however, it was more prevalent among respondents from Chikanda whose workers were often below 18 as shown in table 4, so the situation might be driven from their conceptualization of a domestic worker; they do not perceive domestic workers as being any older.

<sup>39</sup> URL: [www.ilo.org/public/english](http://www.ilo.org/public/english)

<sup>40</sup> ILO C138 of 1973.

<sup>41</sup> Most employers at Chikanda and St. Marys had employed workers aged between 14 and 18 years. See table 4.

Besides the indications in table 5 that most employers are conscious of the minimum age for entering into employment,<sup>40</sup> some employers are still employing workers aged below 18 years.<sup>41</sup> The question that comes to mind is why is there such a gap between what the employers seem to know and prefer and what they do in practice?

The district community development officer in the Department of Gender and Welfare reported this when I asked him to comment on the prevailing gap:

‘The law is weak, so employers are taking advantage of that, they know the right thing is not to employ children under the age of 18 years but do it deliberately.’

It is in this same vein that employing workers below the appropriate age demands that the workers should be assigned work that is not hazardous to their health or development and does not prohibit them from pursuing their education. However, not downplaying that this practice is not compliant with section 23 (4) of Malawi constitution that discourages exploitation of children,<sup>42</sup> domestic employment is an institution that is problematic in terms of monitoring the nature of work the worker might be engaged to do. In this connection, the Employment Act section 9(1)(c) restrains labour officers from freely inspecting private homes except with authority of a warrant issued by the magistrate. Although this is done to preserve the privacy rights of the employer, I would argue that this is a constraint that purports to protect the employer from the arms of the law as seeking a warrant from the magistrate would ultimately have legal implications.

#### *Workers’ sexuality*

One employer triggered a sexuality argument as she indicated that she did not prefer female workers because she feared that they would ‘snatch’ her husband. Ssemanda had the same observation with regard to Ugandan domestic workers’ female employers; some had fired their female domestic workers because they had suspected an affair between their husbands and the workers (Ssemanda, 1995:35-36). In the same vein, Dube puts forward the same observation that white women feared to employ female domestic workers because they suspected that they would sleep with some of the white men. Consequently male white employers had the same fears in employing male workers suspecting that they might sleep with their wives and this had implications for the choice of domestic workers.<sup>43</sup>

The observations and fears presented in the paragraph above are evident enough of the contravention of the provisions in CEDAW article 11(1)(b) and article 13 (d) of the Protocol on the Rights of Women in Africa.<sup>44</sup> The argument I am putting across is that misunderstanding a worker’s sexuality would consequently advance violation of domestic workers’ rights and exploitation of children which is further a non-compliance with provisions

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<sup>42</sup> Children are entitled to be protected from economic exploitation or any treatment, work or punishment that is or is likely to (a) be hazardous (b) interfere with their education or (c) be harmful to their health or to their physical, mental, spiritual or social development.

<sup>43</sup> Source: Dube, ‘Child domestic workers’, in Bourdillon (2000), *Earning a life: Working children in Zimbabwe*. ‘This was during the period domestic employment was just developing in Zimbabwe.’

<sup>44</sup> CEDAW 11(1)b provides that states parties take measures to eliminate discrimination against women in the field of employment in order to ensure, on the basis of equality of men and women, the same rights, in particular the right to the same employment opportunities including the application of the same criteria for selection in matters of employment.

The Protocol to the African Charter on Human Rights on the Rights of Women in Africa, article 13(d), calls states parties to adopt and enforce legislative and other measures to guarantee women equal opportunities in work... In this respect, parties shall guarantee women freedom to choose their occupation and protect them from exploitation by their employers violating and exploiting their fundamental rights as recognized and guaranteed by the conventions, laws and regulations in force.

<sup>45</sup> ILO C138 article (1) provides for all states parties to pursue a national policy designed to ensure the effective abolition of child labour and raise the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons.

in article 1 of ILO C138 (1973), section 21 (1) of the Employment Act and section 23 of Malawi constitution.<sup>45</sup>

### *Employers' customs*

One female employer attributed her preference for female domestic workers to her customs. She explained that in her custom and practices she is not supposed to give orders to male members of the family – her sons are under the husband's authority. This brings in an issue of culture. I argue therefore that it is behind this culture that there is discrimination against women in participating in public life, thus limiting their choices of employment in Malawi.

### *Domestic workers' education*

Four female employers expressed the need to employ the workers when they have completed their basic education. It is from this premise that most employers indicated that they would not choose young domestic workers in order to ensure that they engage workers who might have completed their education, or that those younger ones should be given chance to continue with their education.<sup>46</sup>

However the latter idea was challenged in the field as no single employer offered their workers the opportunity to continue with their education. This might be one contributing factor to the high female illiteracy rate of 55.9 per cent recorded in 1998 (UNDP, 2000).

## **Exploitation of domestic workers**

In this section I look at the employers' approach to the rights of the workers vis à vis the basic human rights that support their social livelihood. The themes that are discussed under this section include, inter alia, violation of workers' rights, (maternity leave; sick leave; right to education; right to rest), non-monetary wages, multi-tasks versus uni-dimensional tasks and hours of work.

### **Violation of workers' rights**

One aim in this study was to verify whether working conditions for domestic workers comply with the workers' basic rights and in the same vein to ascertain whether the gaps amount to gross rights' violation and later to workers' exploitation.

#### *Sick leave*

During this study all the employers said that they had never granted sick leave to their domestic workers.

One employer reported that she made sure that when her worker fell ill she would assist her to source medical assistance. Twelve employers indicated that they allow their workers off days during the period they are not feeling well but they emphasized that there is no need for formal sick leave, as such. However some employers indicated that there is a need for sick leave for these employees.

Although ILO C24 of 1927 assumes that domestic workers must be protected by a compulsory sickness insurance system,<sup>47</sup> the expression of this provision in the employment legislation of Malawi does not directly target domestic workers. This is further evident in the fact that although the Employment Act of Malawi section 46 provides employees with sick leave, considering that section 27's definition of an employer excludes most domestic workers' employers, I doubt if domestic workers would benefit from this provision in the absence of

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<sup>46</sup> Section 25 (1) of the Malawi constitution provides that every person has a right to education; and therefore this is in compliance with this provision.

<sup>47</sup> Sickness Insurance (Industry) Convention No 24, 1927, provides that the compulsory sickness insurance system is to apply to manual and non-manual workers, including domestic workers; URL: [www.ilo.org/public/english](http://www.ilo.org/public/english)

specific regulations that inform the basis of their operations.

### Maternity leave

Table 7 shows the employers' views on the need for maternity leave.

Table 7: Views of the employers on the need for maternity leave: by sex

Location	Those for maternity leave		Those not for maternity leave	
	M	F	M	F
Chikanda		2	3	1
St. Marys		2		2
Mulunguzi	2	6	1	
Totals	2	10	4	3

The general impression from the table is that most male employers do not appreciate the need for maternity leave. However other male employers do appreciate the reproductive rights of the domestic workers and one employer made this comment:

‘Dismissing pregnant workers may be cruel, they must be granted holiday and allow them to continue working so that she can get money to help her little child.’

In the same table, three female employers indicated that they are not for maternity leave. It is regrettable that all the anti-maternity leave advocates strongly purported to dismiss the workers as a solution.

One employer whom I interviewed had a pregnant domestic worker; she was almost due to deliver in the following two months. The employer said that maternity leave is essential and that her worker was to go for the leave soon. In her own voice:

‘...Antchitowa ayeneradi kuganiziridwa mchikhalidwe cha moyo wao, monga mayi mukuwaonawa ndi oyembekedzera choncho ayenera kupita kutchuthi, kukabereka mu mwezi wa mawa.’

Meaning that:

‘...it is necessary that workers' welfare be considered especially when they are pregnant, for instance this woman is pregnant and she needs to go on leave next month.’

In the triangulation process I talked to a lawyer lecturer at the University of Malawi on this issue. He said that he did not believe maternity leave was necessary and went on to say that the worker must be dismissed to give her a chance to take care of her baby. This is evidence enough that discriminatory practices are deeply rooted; the same lawyer expressed the need to employ legally acceptable age groups so the argument for the former discourse may not be attributed to lack of knowledge of human rights. I presume that most employers are not ready to have their workers exercise their reproductive rights or they risk losing their job, an action amounting to gross violation of workers' rights.

The other lawyer, a magistrate, was quick to say that this leave must be there and should remain the workers' fundamental right, however, he became cautious about the length of the leave, saying that it should not be as long as three months, citing the practice in other sectors. The question that remained was why should this

<sup>48</sup> CEDAW article 11(2)b provides for states to introduce maternity leave with pay without loss of former employment.

institution remain an exception when it comes to issues of rights if we really argue that these workers form part of formal employment?

In accordance with CEDAW, article 11 (2) (b),<sup>48</sup> and the Protocol to the African Charter on the Rights of Women in Africa, article 13 (i),<sup>49</sup> Malawi domesticated the maternity leave issue in the Employment Act, section 47 (1)<sup>50</sup> and the employers' institutions have working policies in compliance with the provisions. It therefore constitutes an act of non-compliance and exploitation and even violation of women's rights if other employers dismiss their workers on the basis of pregnancy; however I think it may require domestic workers to have their own specific regulations if they are to benefit from the provisions.

### *Education*

Ten school-going age<sup>51</sup> domestic workers were in employment – nine female workers and one male worker. Besides this situation none of the employers released their workers for school attendance. Despite claims made by some employers to the effect that they should have loved to allow the workers to go to school, they shifted the blame on the workers for their lack of interest. The workers, on the contrary, expressed fear that the employers would not allow it.

Six workers, one male worker and five female workers indicated their interest in going back to school. One worker stressed her point by saying that she would be leaving in the following month to enrol at her home village school.

In stressing the issue of workers being denied the chance to continue with her education while working, one female employer said:

'She however does not go to school because I think that is off the point as to why she came here.'

This represents the thinking of most employers. However, so many provisions support the right to education – article 12 (2)(a) of the Protocol to African Charter on the Rights of Women in Africa provides that state parties promote literacy among women and CEDAW article 10(d) calls on states parties to ensure equal opportunities to benefit from scholarships and other grants while in (e) it denounces discrimination against women in order to ensure them equal rights with men in the field of education aimed at reducing the existing gap between men and women. These provisions are domesticated through section 25 (1) of the Malawi constitution.<sup>52</sup>

It follows then that in the event that Malawi is a party to these provisions and that domestic employment is governed by the Employment Act, then I do not see any good reason why domestic workers should be denied their rights to education especially when other employees in other sectors enjoy these rights. At this point I want to argue that if it is a question of time then it is a question of planning on the part of the state to take these concerns on board while ensuring that this right is granted to them and I should think that relevant school programs would be an answer to this dilemma.

### *Working hours and rest*

The findings reveal that 24 employers admitted that their employees had long working hours; essentially they work over nine and half hours a day, and most of them work on weekends. Although some employers claimed that they allowed their employees time to rest, such claims were challenged by workers who indicated that they

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<sup>49</sup> Article 13(i) of the protocol...on the rights of women in Africa calls for states to guarantee adequate and paid pre and post-natal maternity leave in both private and public sectors.

<sup>50</sup> Employment Act of Malawi section 47 (1) provides that a female employee shall be entitled to maternity leave within every three years, for eight weeks on full pay.

<sup>51</sup> In Malawi, the youth are normally out of primary school at least by 16 years.

<sup>52</sup> Section 25 (1) states that all persons are entitled to education.



hardly found any time to rest. Most said that there was no specified time for resting, while others said they did have breaks at intervals within their working hours, although without proper regulations.

One worker said that he works from 03:00 hours and stops at 22:00 hours in the evening without resting and he commented:

‘There is no time to rest, the moment I attempt to rest, he says I am a thief, I am stealing his money since I am paid for the time I am resting...’

He further reported that he works for all the seven days of the week and that he is only allowed half a day off on Sunday because he goes to pray. This is representative of other respondents who indicated that they worked long hours and did continuous work, only resting when they retire to bed which most of them did only after 21:00 hours in the evening.

The Employment Act, section 37(b)(1) recommends that no employer should allow an employee to work for more than eight hours consecutively.<sup>53</sup> Further to this the same Act provides in section 36 (1) that employees’ normal working hours should be included in the employment contract. Under subsection 4 of the same section the Act stipulates that no employer shall require the employee to work for more than six consecutive days without rest of at least 24 consecutive hours on any day agreed upon by the two parties.

These provisions are presumably applicable to domestic workers since they are not clearly excluded and they are not exempted as is the case with other professionals like guards and shift workers who are exempted from provisions in section 36(3) and section 37(a).<sup>54</sup> In the absence of such exceptional provisions for domestic workers and in the absence of its recognition together with the other institutions, the phenomenon surely amounts to gross exploitation on the part of the employers.

Taking the situation above as representative of prevailing practices in the country, it is evident that domestic workers are not granted specific regulations in terms of standard working hours and their resting periods. However some African states have domestic workers regulations, either separately or incorporated within the general legislation that regulates other workers (see annex 4 for basic conditions).

#### *Non-monetary wage system*

Five workers indicated that they got extra benefits from their employers. Consequently their wages were as low as Malawi kwacha 500 (US\$5). I was made to believe that the gifts they received from the employers were subsidizing on the gross wage. This is in addition to the popular perception among most employers who said that there was no need to pay the domestic workers high wages since they get free food, free accommodation and they use their groceries. I would argue from this that if only these arrangements were put clearly into the terms of a contract then the employee would be in much better position to make an informed choice.

I further argue therefore that if domestic workers were regulated and labour inspections effected then workers would be in a position to make informed decisions. I am however not downplaying the fact that some employees may be so desperate that accepting employment in exchange for such benefits would not be an issue.

The Employment Act section 52(2) discourages deducting half the employees’ remuneration. However if the employers consider benefits that workers get from them, then it is an act amounting to contravention of this provision in the Act. In this connection the Labour Relations (domestic workers) Regulations in Zimbabwe provide straightforward provisions to the domestic workers pertaining to the matter under discussion (see an-

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<sup>53</sup> Employment Act section 37(b)1: no employer shall permit any employee other than a guard or a shift worker who works for six days per week to work for more than 8 hours in any working day.

<sup>54</sup> Section 36 (3) provides that an employer may require a guard to work for more than 48 hours provided that any hours worked in excess of 40 hours are treated as overtime and paid at the rate of 150 per cent of the basic pay.

Section 37(a) provides that no employer shall require a guard or shift worker to work for more than eight hours on any day.

nex 1).

### *Multi-tasking versus uni-dimensional tasking employment*

The study found that 23 employers conceded to the fact that they engaged the services of their workers based on non-specific terms of contract where the boundaries of responsibilities were left open. Only three workers were employed for specific tasks and they were under uni-dimensional contracts. Essentially workers who were working as cooks and housekeepers, working inside the house showed that they were on multi-tasking contracts as opposed to those who were working outside the house, basically as ‘garden boys’, who had specific tasks. The state is obliged to see to it that a contract of employment is for a specific task as provided in the Employment Act section 25 (2).

The gender argument is that the work inside the house which, according to this study, is associated with female workers is the same as work offered on a multi-tasking dimension. Some élites in Mulunguzi described female workers as physically unfit for the work done outside the house, such as chopping firewood or clearing bush around the house. This however can not warrant discriminating against women in terms of the contracts they enter into because traditionally, they are the ones who perform this work in their homes.

According to CEDAW, article 11(1)(c) and the Protocol to the African Charter on the Rights of Women in Africa article 13(d), the argument is that gender differences should not be the basis for disqualifying women from equality with men on the basis of the types of contracts they should enter into.

Without fear of making a generalized assertion, Busia (1991) asserted that the nature of the duties that domestic workers perform without corresponding rights makes them virtually slaves. Strengthening his argument is the working environment that was observed during the research which showed that domestic workers operate in a vacuum, unable to access the basketful of provisions which could protect them, if it weren't for the thick wall of exclusion that keeps them out in the cold and liable to face exploitation. Indeed James (Chapter 5 verses 1-6)<sup>55</sup> was right and his concerns over the poor and the vulnerable are just as relevant in our times.

### **Employment laws and domestic workers**

This section analyzes and discusses themes concerning the relationship between the employment laws and domestic workers under the following headings:

- Inadequacy of the laws that regulate domestic employees;
- Domestic workers' condition of work;
- Employment Act, section 9.

#### **Inadequacy of the laws that regulate domestic employees**

Basically the officials from government departments and non-governmental organizations contributed to this section. The labour officer commented on what he thought about the effectiveness of the law on domestic workers and had this to say:

‘I think there are no specific provisions that significantly address domestic workers. The Employment Act provides conditions for the general workers and specifies where possible, however, domestic workers are not mentioned throughout. When dealing with the problems of domestic workers – we just apply the ordinary provisions however the problem is that the working environment of domestic

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<sup>55</sup> In the Bible, James 5: 1-6 reads in part: ‘You rich people...you have piled up you riches in these last days. You have not paid the wages to those who worked in your fields...’



workers is different from those in other sectors.’

The officer continued to say that the recruitment of these workers is in the first place unprocedural. I examined most of the workers in terms of Employment Act section 27 on their recruitment procedures; there was no one who had this kind of documentation.

In 1963 some concerned employers formed what they called the Employers Consultative Association of Malawi, with the aim of guiding the employment of domestic workers as part of their agenda (see annex 2). Although the association is hardly apparent now, their attempt was a milestone in the organization of domestic workers.

An official from the gender department said that the prevailing law is inadequate partly because the monitoring mechanism is not effective. He observed that the labour inspectors seem to fail in their duties on the ground and therefore argued that it is one thing to have the laws and another to put them into practice.

The labour officer again indicated that their problem is the limitation stipulated in the Employment Act section 9 (c). I want to argue that domestic workers operate in the private sector and therefore the preserve of the right to privacy is favoured against the employees’ right to protection. I further want to argue that it is by this section that the state needs to set specific regulations for domestic workers that will form the basis for their protection and indeed create a clear basis for litigation.

Because of the inefficiency on the part of the state in solving domestic workers’ problems, some workers opt for alternatives. When I visited Bwalo Initiative, I found a case involving one domestic worker who was asking the employer to pay her three months’ salary totalling 2400 Malawi kwacha (US\$20) she accumulated prior to her dismissal (see annex 3 for the details of the case). This was an indication that the organization complements efforts by the state in assisting domestic workers in solving their cases.

Although this is the situation, some domestic workers still litigate through the courts. When I visited the court, the magistrate allowed me to go through the court records for the cases filed under this court for the period January to December 2005 with a view to appreciating the low rate at which domestic workers use the court. I found out that only four cases were presented to the court out of a total of 314 cases in the year. From this revelation, one can clearly see that while the claim that the law is inadequate is true, it is also evident that domestic workers don’t use the law adequately. It can also be argued that probably domestic workers do not use the existing structures because they are not adequately protected by the law.

The provision under the Protocol to the African Charter on the Rights of Women in Africa article 12 (2) (a),<sup>56</sup> is relevant here because literacy forms the basis for accessing information, especially in this context where most women are domestic workers.

#### **Conditions of service for domestic workers**

I was interested in finding out about the contributions of the respondents towards the formulation of domestic workers’ regulations. As a point of departure I sought their contributions on the following:

- minimum wage, resting and working hours (already discussed);
- leave: annual leave, public holidays, sick leave and maternity leave;
- hours of work;

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<sup>56</sup> States parties shall take specific positive action to promote literacy among women.

- a domestic workers' union.

### *The question of leave*

I categorized this section into Annual leave; Sick leave; Maternity leave and Public holiday.

Tables that follow show the reactions of employers and workers to this subject, the statistics are further segregated by sex.

*Table 8 (a): Employers' responses on the question of leave by sex*

Location	Annual leave		Sick leave		Maternity leave	
	Yes	No	Yes	No	Yes	No
	M	F	M	F	M	F
Chikanda	2	4	2		3	4
St. Marys	1	7	2	3	1	
Mulunguzi	5	4	1		4	2
<b>Totals</b>	<b>8</b>	<b>15</b>	<b>2</b>	<b>1</b>	<b>9</b>	<b>9</b>

*Table 8 (b): Workers' responses on the question of leave by sex*

Location	Annual leave		Sick leave		Maternity leave	
	Yes	No	Yes	No	Yes	No
	M	F	M	F	M	F
Chikanda	6		1		4	
St. Marys	2	6			2	4
Mulunguzi	4	3			6	2
<b>Totals</b>	<b>6</b>	<b>15</b>	<b>1</b>	<b>1</b>	<b>8</b>	<b>10</b>

### *Annual leave*

The general conception was that more female employers were for the idea that domestic workers should be granted leave of some kind. Fifteen female employers expressed positive responses to annual leave and eight male employers followed suit.

All 16 workers who responded to this concern said that in fact they had been denied this right since they joined the profession. One worker (42) said that she had been in employment for almost 20 years but had never been on leave. She however appreciated that she always had Sunday off and resumed work on Monday.

### *Sick leave*

Eight domestic workers who responded to the question about the need for this leave welcomed the idea. One male employer however thought that there was no need for sick leave. Other employers were for the idea; one said that this was essential because it would give the sick a chance to seek medical attention. The question

<sup>57</sup> An employee shall be entitled after completing twelve months' continuous service, to at least four weeks sick leave on full pay and eight weeks on half pay during each year.

remained as to how long this would be. The lawyer and magistrate stated that the ideal situation was to adopt the general provision for sick leave provided in the Employment Act section 46 (1).<sup>57</sup> Considering that the Act embraces the idea of sick leave for other workers and, if it were not for the disjuncture in section 27, this provision would also apply to domestic employees. However I argue that since these workers are equally protected by the constitutional provision for fair labour practices, the state is obliged to ensure that they are covered by this Act by revisiting its provisions.

### *Maternity leave*

Ten workers indicated that this must be granted to pregnant workers. However out of the nineteen employers, only 12 agreed to the idea of whom ten were female and two were male employers. Of the seven employers who said this was not possible and should not happen, four were male and three were female employers.

The three female employers who were negative about this held the view that the pregnant worker must be dismissed, one of them said:

*‘...otenga pakati ndiye kumangowachotsa ntchito basi.’* (pregnant workers must be dismissed.)

The paralegal officer at Bwalo Initiative said that these pregnant workers should be granted three months maternity leave following the general provision under the Employment Act section 47 (1)<sup>58</sup> but others felt the leave should be shorter than the normal three months granted in the formal sector.

CEDAW article 11 (2) and the Protocol to the African Charter on the Rights of women in Africa article 13 (i) provide for non-discriminatory practice against women on maternity issues. It is on this understanding that employees enjoy this right that an argument arises for having the same applicable to domestic employment.

### **Hours of work**

Most workers suggested between eight and twelve hours as being the maximum working hours. Coincidentally most employers suggested the same.

In the triangulating process, the magistrate suggested that those live-out workers could work for eight hours to give them a chance to return home; however he said that it would be difficult if the worker resides within the same house because the employer is tempted to call them any time there is need for work. The labour officer thought that because most workers have free time within the period of work, the problem would be how to monitor this or whether to calculate their hours based on their presence at the work place.

The Employment Act stipulates the maximum working hours for every employee within Malawi. The issue is that domestic workers face exclusion as the state’s laws do not incorporate them.

### **The domestic workers’ union and the domestic employers’ association**

Eleven out of the 30 workers indicated that they supported this idea although it was a relatively new concept. One worker commented:

*‘I have never heard about a domestic workers’ union and I am totally surprised to have you getting concerned about our problems. I just hope that this is the beginning of the new era in our employment as domestic workers.’*

This indicates clearly that domestic workers have for a long period been discriminated against in so far as issues of labour relations are concerned. Despite numerous workers’ trade unions and indeed the constitutional provision section 31(2) where the state provides the right to everyone to form and join trade unions, domestic workers appear to have existed without any union that could fight for their interests.

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<sup>58</sup> It stipulates that a female employee shall be entitled within three years to at least eight weeks maternity leave with full pay.

Another employee justified her support for the idea by saying that it would help them to negotiate their rights that are violated and to report cases of abuse that prevail among the workers as well as offering the opportunity to negotiate for higher wages.

Ghai and Rwadan had earlier argued that the lack of trade unions fuels the exploitative and abusive rate of pay in the work places. Further to this Kamwambe also made an assertion that the non-existence of a trade union encouraged the exploitative practices of employers (Ntafu and Zeleza, 2000).

In Zimbabwe there are such groups that play the role of mediators between the employers and the workers in cases needing dispute resolution, before these cases are taken to the formal legal system. ZIDAW and ZIDWEA are a manifestation of such unions (Mthethwa, 1999). There are several countries with similar arrangements to ensure that domestic workers' conditions are regulated (see annex 4).

Similarly I am arguing that probably the lack of representation in the forums where employees might need to contribute has aggravated their exploitation over the years, hence the birth of domestic workers' trade unions and an employers' association might bring significant transformation to the sector.

## **CHAPTER FIVE**

### **Conclusion and recommendations**

Although this study cannot generalize the findings and come to holistic conclusions, it forms the basis for a wider approach to a similar study in Malawi. However, the conclusions made in this chapter are based on only this narrow research and its findings.

The conclusions are presented according to the assumptions that were being tested during the research and in that order for the sake of clarity.

#### **Conclusions**

##### **Socio-economic realities prompt people to take employment as domestic workers**

The study has revealed that people are forced into domestic employment for various reasons including: the lack of formal jobs available (unemployment), as a result of a divorce (women), because they have been orphaned and have no alternative home, because they have had to drop out of school and due to poverty.

On unemployment, the study reveals that the problem is not the qualifications of the job seekers, rather it lies in the inadequate jobs available on the market. It also indicates that there are large numbers of school leavers who have been unable to find jobs.

The second reason uncovered was divorce. The study revealed that some domestic workers, especially women, go into domestic employment because they have been divorced. The scenario leaves them with the huge burden of looking after the children with little or no means.

Thirdly is the issue of orphanhood; the study found that some people go into domestic employment because they have no parental support because their parents have died. It also revealed that orphan support structures are not adequate. It is important to mention that the government is doing little to alleviate this problem and as a result orphans take the alternative of going into domestic employment.

The fourth reason that emerged was the tendency for young girls to fall pregnant and be forced to withdraw from school. The study shows that some female domestic workers join the profession because they withdrew from school due to pregnancy.

Finally there was the issue of poverty. This study gave the impression that most domestic workers sacrifice their rights and agree to work under such inhuman conditions basically because they are poor.

At this point, I conclude that socio-economic realities do underscore the reasons that people go into domestic employment.

##### **Domestic workers, a source of cheap labour**

This study has found out that in general domestic workers are paid too little. In some cases workers get as little as US\$5. The findings further show that because female domestic workers have flooded the market, they are the ones who suffer most. At least during the period this research was carried out, the general minimum wage for the lowest paid person in Malawi was equivalent to US\$22.

The study has also confirmed the relationship between poverty and one's power to assert one's rights. Because most workers come from poor backgrounds, they tend to be vulnerable and do not bargain for their rights, making their labour cheap.

The study has also found that employers' economic position is not the core reason why they hire cheap labour. In the study some élites and bourgeoisie were paying their domestic workers the same low wages as those in the lower class.

I am therefore drawing the conclusion that hiring cheap labour is a function of multiple factors.

#### **Preference for female and young domestic workers**

Generally the study found that most employers prefer female domestic workers for various reasons. It is important to mention here that these reasons are basically gender biased. The study has also found that most employers still engage young domestic workers.

This brings me to the conclusion that most employers are not aware that it is illegal to engage young people in employment, even in domestic employment, and female workers are considered weak and easy to manipulate and therefore ideal to work as domestic workers.

#### **Exploitation of domestic workers**

The study discovered that while most employers don't seem to know the rights of their employees or if they do know they do not make the rights available to their workers. The practice on the ground is purely exploitative – domestic workers' rights are not granted to them; most of them virtually just work as slaves.

The study further finds out that some domestic employees are paid in kind or part of their wage is paid in kind without their consent.

The majority of domestic workers are engaged with an unspecified contract – their work is multi-tasking without this being considered in their remuneration.

From these findings, I conclude that most domestic workers are economically and socially exploited.

#### **Employment laws and domestic workers**

The study found out that the laws of employment exclude domestic workers and consequently the latter do not have adequate protection. It further shows that domestic workers lack knowledge of the available Employment Act so they do not use it to address their problems.

The study also reveals that most workers and employers are geared up for domestic workers' regulations to be formulated (see tables 2, 6, 7, 8). The study also shows that most workers welcome the idea for a specific domestic workers' trade union so that it can represent their interests.

The conclusion I make is that the employment legislation in Malawi does not adequately address domestic workers' concerns and that most domestic workers and employers are not even aware of its existence.

#### **Recommendations**

- I recommend the enactment of specific legislation for domestic workers, the Domestic Employment Regulations Act. The Act will address the gaps that exist within the institution, especially designed to bring emancipation to female domestic workers who are not only in the majority but also are more vulnerable and exposed to abuse of their rights.
- Because of circumstances that might prolong the procedures for the enactment of the new domestic workers legislation, I recommend an alternative to amend section 9 (1) of the Employment Act to allow free labour inspection in private houses. This will meet one of the proposed stands in the labour inspection as is put by Richthofen Von Wolfgang (2002) who writes that political will and commitment must not only translate into adequate resources, it must first and foremost provide an appropriate policy framework and legal base for labour inspection (Wolfgang, 2002).

- Thirdly I recommend that section 27 of the Employment Act be amended so that the term ‘employer’ includes domestic workers’ employers in its true sense.
- Fourthly I recommend that domestic workers form their own specific trade union that will enhance their representation in forums where their contributions will be required as other unions do. Related to this I further recommend the formulation of a domestic employers’ association to represent employers on their issues of concern and during dispute resolution with the employees as is the case in other jurisdictions.
- Throughout the research there have been revelations about lack of legal literacy and knowledge of human rights. I therefore recommend legal literacy programmes to be facilitated by the government and non-governmental organizations.

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### List of annexes

- 1 Domestic workers' regulations of Zimbabwe.
- 2 Guidelines for the employment of domestic workers in Malawi of 1963.
- 3 Bwalo Initiative Civil Cause No 44/005, *Ellena Kazembe v Mrs Kumwenda*.
- 4 Summary of the basic conditions of services for domestic workers in selected countries.
- 5 Research guide.

### Annex 1: Labour Relations (Domestic Workers) Regulations, 1992.

Below is the summary of the regulations contained in the real document:

- Interpretation of the terms used
- Grading and wages for domestic workers
- Hours of work
- Accommodation, transport, lights and fuel (minimum allowances)
- Conversion rates
- Payment of overtime
- Deductions
- Payment of wages
- Part-time and casual employment
- Piece-work, task-work or work on a ticket system
- Vacation leave
- Public holidays
- Benefits during sickness
- Contracts and notice
- Continuous service
- Records of service
- Protective clothing
- Gratuities on termination of employment

## Annex 2: Guide to the employment of domestic workers in Malawi in 1963

This guide was prepared by the Employers' Consultative Association of Malawi with the intention of guiding prospective employers who were to employ domestic workers in their homes and to pay by themselves. Among other sections the guide provided for the following:

### Engagement – part of contract agreement form:

Domestic servants must be engaged on a daily rate of pay with the agreement of the employee.

#### *Details of employment*

- 1 Name of employer:  
Name of employee:
- 2 Probationary period  
From:  
To:  
At a daily rate of:
- 3 On completion of probationary period the engagement to be on a: daily, weekly, fortnightly, monthly basis.
- 4 Rate of pay:  
Basic Housing allowance Totals  
Per day  
Per week  
Per fortnight  
Per month  
If on daily rate, wages to be paid at:  
If on weekly rate, wages to be paid at:  
If on fortnightly rate, wages to be paid at:  
If on monthly rate, wages to be paid at:
- 5 Accumulation of daily wages  
I agree to the accumulation of my daily wages and for these to be paid to me at: weekly intervals, fortnightly, monthly intervals.  
Signature of employee:  
Signature of witness:  
Signature of employer:  
Signature of witness:

The section shown above is part of the contract agreement form that the employee had to sign in the presence of the employer and the witnesses.<sup>59</sup>

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<sup>59</sup> Adopted from the Employers' Consultative Association of Malawi (1978): *Guide to the employment of domestic workers*.

### **Annex 3: Bwalo Initiative Civil Cause No 44/005**

The case was recorded on the 27/06/2005 on a similar form as that presented below which is adopted from the actual form. The content is a translated version of the vernacular one that was recorded on the form:

*1.3.1 You are asked to respond to the following questions:*

1. The day you came to present your complaint.....27/06/05.
2. Your name and address.....*Ellena Kazembe, c/o Box 18, Thondwe.*
3. Where you live.....*Mbamba village, T/a Mlumbe, Zomba.*
4. Level of education.....*not educated.*
5. Are you married?....*yes.*
6. How many children?.....*7 (seven).*
7. Do you work?.....*no.*
8. Do you have any property? ...*only a radio.*
9. How do you get your income?....*through piece work.*
10. How much do you get in a month?.....*K400.00, (equivalence of US\$4).*
11. What is the complaint?.....*I want my money amounting to K2400 from my former employer Mrs Kumwenda.*
12. Details of your complaint:

I was employed by Mrs Kumwenda who stays at Thondwe police station. She does her business at the market there in Thondwe. We had agreed a wage of K800 (US\$8) per month. I have worked there for three months but I have not been paid. I did not take anything from her and I want assistance to recover my money.

The complainant used a thumb as a signature indicating that she is illiterate.

*Paralegal's comments:*

Write to the defendant and invite her for hearing on a particular date.

The case had not yet been settled by the time I came to collect this information.

#### **Annex 4: Summary of conditions of service for domestic workers in selected countries:**

This summary has been adopted from Delport (1995)

1. **Minimum wages:** Zimbabwe had monthly minimum wages, and in 2004, according to the grade of the domestic workers, it ranged from Z\$800,000 to Z\$950 000.
2. **Hours of work:** USA provides 40 hours per week, Norway provides 50 hours, Zimbabwe provides 49 hours and Swaziland 48 hours.
3. **Rest periods:** Uganda provides for rest periods after 6 hours continuous work and the break is 30 minutes long. In Zimbabwe workers are permitted to rest after 6 and a half hours of continuous work, lunch break is 1 and a half hours and tea break is 15 minutes.
4. **Weekly time off:** Zimbabwe permits 1 and a half days off days per week. Swaziland permits one day per week. Uganda allows 24 hours per week of rest.
5. **National holidays:** Zimbabwe allows them fully paid leave of absence during national holidays. Swaziland permits a day holiday on each national holiday. In Tanzania domestic workers who work on a public day other than on Sunday are paid twice the hourly wage in addition to the normal monthly wage.
6. **Annual leave:** Swaziland allows workers 12 working days paid leave. Zimbabwe allows 1 and a half days leave in a month. Tanzania allows them a total of 28 days per year and can be spread within every three months.
7. **Sick Leave:** Swaziland allows 15 days with full pay in a year. Uganda offers one full month of working days. Tanzania permits six months paid sick leave after which the employer may terminate the service but in the first three months employees get full pay and in the second three months they get half pay for each month.
8. **Maternity leave:** Swaziland provides 13 days leave with pay and without pay thereafter. Uganda permits eight weeks of working days and Zimbabwe allows 90 days and the employee is entitled to wages of not less than 60 per cent normal wage.

## **Annex 5: Research guide**

### **Question 1: Do socio-economic realities prompt people to seek employment as domestic workers in Malawi?**

Sub questions:

- Does parent's inability to finance education of their children prompt them to seek employment as domestic workers in Malawi?
- Are all the domestic workers education drop outs?
- Are all the domestic workers orphans?

*Specific questions:*

1. Workers:

- What is your name?
- Where do you come from?
- Why did you take employment as a domestic worker?
- Explain in details your experiences before you came to work as domestic worker.

### **Question 2: Are people employed as domestic workers in Malawi because they are a source of cheap labour?**

*Sub-questions:*

- Are domestic workers paid lower wages than other unskilled/ unprofessional labourers working outside the house?
- Do domestic workers demand their rights and seek redress for their exploitation?
- Are domestic workers provided with minimum working conditions like other labourers?

*Specific questions:*

Workers/ employees:

- How does your employer pay you with regard to the period of payment?
- Is the salary enough for your basic needs?
- What things do you manage to buy out of the salary you get?
- How much would you like to demand for your salary?
- Do you know the salary of the other labourers who may be working outside the house?
- What benefits do you get other than the wages?
- What benefits do you think you should be given?
- Do you have a common voice as domestic workers to speak for your rights?
- What are the areas that require a common stand as domestic workers to ensure your rights are not violated?

Employers:

- Why did you employ this domestic worker?
- Explain her/his direct responsibilities in the assignment?
- What other work do you expect of her other than those you have mentioned already?
- How much do you pay the servant?
- In your opinion, is this commensurate with the work done by the servant?
- What should happen to improve the life of these domestic workers?
- What other benefits does the worker enjoy other than the wage s/he get?
- What rights do you ensure the servant enjoy during the period of their work?

- If the salary of these workers is to be regulated, how much do you suggest?

**Question 3: Is there socio-economic exploitation of domestic workers in Malawi?**

*Sub-questions:*

- Do the employers observe workers' rights?
- Do the workers' lived realities/experiences reflect the working conditions of servants?

*Specific questions:*

Workers:

- How long is your working day?
- How much time are you given to rest after working hours?
- What happens concerning your pay when you fall sick?
- Explain your experiences about how the employer handles issues about your holidays.
- What rights do you enjoy as you are working as domestic workers?
- What rights are not well respected by your employer?
- What other problems do you encounter as you work here?
- How do you solve these problems?
- How can the government ensure that employers begin to respect domestic workers rights?

Employers:

- How long is a servant's working day?
- Explain your understanding of workers' rights.
- Which of these rights do you respect for your worker(s)?
- How do you respect these rights?
- What problems do you experience with the servant?
- How do you solve these problems?
- Would you contribute to the general social conditions of work regulations for the domestic workers?

Labour officer:

- Have you ever solved problems related to domestic workers and their employers?
- Explain in detail the nature of problems and their prevalence.
- Would you give your comment on the levels of reported cases of abuse?
- What should happen to encourage victims of abuse on the job to be reporting their cases to your office?

Welfare officer:

- What are the problems that come to this office concerning domestic workers and their employers?
- Who frequently reports these problems?
- How do you assist victims of exploitation and abuse who come for redress to this office?
- What would you like to see as working conditions for the domestic workers in the following areas:
  - Minimum age for domestic workers?
  - Minimum wages?
  - Annual holiday i.e. lengths and holiday grants?

- Sick leave and maternity leave?
- Maximum working hours?

**Question 4: Do people prefer females and minors to males and elderly people for domestic workers?**

*Specific questions:*

Employers:

- Why did you employ this female/male domestic worker?
- How old is the worker?
- Given the chance what age workers would you prefer to employ?
- What reasons would you give for the answer above?
- If the government is to fix employment age for domestic workers, what advice can you provide?
- What are the advantages of employing female workers and male workers and vice-versa?

**Question 5: Does the Employment Act need reform to regulate domestic workers?**

*Specific questions:*

Workers/employers:

- If the government is to enact legislation to regulate domestic workers, what would be your contribution on the optimum working conditions regarding the following:
  - Minimum age for domestic workers.
  - Minimum wages.
  - Annual holiday i.e. lengths and holiday grants.
  - Sick leave and maternity leave?
  - Maximum working hours?

Labour officer:

- What laws regulate domestic workers in Malawi?
- How effective is this law?
- Do you think domestic workers would better be protected if a separate Act is put in place?
- What is your contribution to this Act on the following:
  - Minimum age for domestic workers.
  - Minimum wages.
  - Annual holiday i.e. lengths and holiday grants.
  - Sick leave and maternity leave?
  - Maximum working hours?
- What are the working conditions for the casual labourers from the legal perspective?
- How expedient can this new Act be put in place?
- What strategies can be used to achieve this new legislation?

Lawyer(s):

- What legislation regulates the domestic workers in Malawi?
- How do you examine employment Act with regard to domestic workers in the following:
  - Minimum age for domestic workers.



- Minimum wages.
- Annual holiday i.e. lengths and holiday grants.
- Sick leave and maternity leave?
- Maximum working hours?
- Do you think putting in place specific domestic workers Act can improve their conditions?
- What can be your contribution regarding the working conditions of domestic workers in this new legislation?

Magistrate:

- How frequently does the court experience cases involving domestic workers?
- What are the most prevalent cases in the area?
- It appears domestic workers are always abused and exploited by their employers, why is reporting so limited in this regard?
- Which legislation regulates domestic workers in Malawi?
- How effective is this legislation in the protection of both employees and the employers?
- What is your comment to the idea of enacting independent legislation on domestic workers? Will it improve their working conditions?
- What can be your contribution on the working conditions of the domestic workers in the following:
  - Minimum age for domestic workers.
  - Minimum wages.
  - Annual holiday i.e. lengths and holiday grants.
  - Sick leave and maternity leave?
  - Maximum working hours?