
**MATERNITY RIGHTS IN TANZANIA AND THE LIVED REALITIES OF FEMALE
DOMESTIC WORKERS' ENJOYMENT OF MATERNITY BENEFITS: A CASE
STUDY OF DOMESTIC WORKERS WORKING IN ILALA AND TEMEKE
DISTRICT IN THE DAR ES SALAAM REGION**

BY

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**A Dissertation submitted in partial fulfilment of the requirements for a Masters Degree
in Women's Law, Southern and Eastern African Regional Centre for Women's Law,
University of Zimbabwe
2014**

ABSTRACT

Through its Employment and Labour Relations Act ('ELRA'), 2004 (which is generally applicable to all workers, including domestic workers), Tanzania has incorporated into their contracts of employment provisions for balancing work, family and personal life as provided under the ILO Convention on Maternity Protection. Under the ELRA an employee, including a female domestic worker, is entitled to maternity leave, breast feeding breaks and maternity benefits. The writer aims at exploring the extent to which these provisions are actually enjoyed by domestic workers. She discovers that despite the laws that are in place, the lived experiences of domestic workers proved that they do not enjoy these maternity rights. She identifies and explains the different factors that prevent female domestic workers from enjoying these benefits. The writer conducts her research using a combination of several methodologies (including the human rights and grounded theory approaches) guided overall by the unique Women's Law Approach. She also conducts this research by implementing several data collection methods including in-depth interviews, group discussions and personal observations as well as research into relevant laws and literature in the area. Finally, in order to improve the working conditions of female domestic workers the writer proposes the enactment of specific legislation for domestic workers as well as the running of public awareness programmes and the dissemination of information. She also advocates the strengthening of the inspectorate department within the Ministry of Labour.

Declaration

I, Sheila Ali Mwenda, do hereby declare that this is my own original work and has not been submitted and is not currently being submitted for the award of a degree in any University.

S.A. Mwenda

April 2014

Dedication

This work is dedicated to special people who are part of my family, my beloved husband Michael, and my children, Kelly and Chloe, for whom I was not there when you needed me most.

Acknowledgements

Firstly, I would like to thank Almighty God who gave me the strength and capacity to produce this work.

My special thanks go to my supervisor, Professor J.E. Stewart who guided me to the completion of this research project.

I wish to thank those who provide me with the information at Ministry of Labour and Employment, Nation Social Security Fund, the Commission for Mediation and Arbitration, and Tanzania Domestic Worker Trade Union, CHODAWU.

I am also thankful to my employer the Prevention and Combating of Corruption Bureau for giving me permission to undertake this programme.

I sincerely thank the sponsor of the course Norwegian Ministry of Foreign Affairs for funding the project.

Last, but not least, to all staff of SEARCWL, friends and my family for being supportive during the whole period of my study.

List of abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CRC	Convention of the Rights of Child
CMA	Commission for Mediation and Arbitration
CHODAWU	Tanzania Conservation, Hotels, Domestic and Allied Workers Union
DWD	Domestic Workers Desk
ELRA	Employment and Labour Relations Act
ICESCR	International Convention on Economic, Social and Cultural Rights
ILO	International Labour Organization
LAPF	Local Authority Provident Fund
MDGs	Millennium Development Goals
NHIF	National Health Insurance Fund
NSSF	National Social Security Fund
NEP	National Employment Policy
PPF	Parastatal Pension Fund
PSPF	Public Service Pension Fund
SADC	Southern Africa Development Community
SEARCWL	Southern and Eastern Regional Centre for Women's Law
TZS	Tanzania Shillings
UDHR	Universal Declaration of Human Rights
URT	United Republic of Tanzania

List of national laws

Employment and Labour Relations Act No.6 of 2004 (ELRA) (came into force in 2007)

Labour Institutions Act No.7 of 2004

Local Authority Provident Fund Act, 2006

Parastatal Pension Fund Act, No. 14 of 1978

National Employment Police, 2008

National Social Security Act, No. 28 of 1997 (R: E 2002)

National Health Insurance Fund Act, No.4 of 1999 (R: E 200)

The Constitution of the United Republic of Tanzania of 1977 (amended as at 2008)

List of national policies

Tanzania Social Security Policy 2003

List of international human rights instruments

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
1979

Convention on the Rights of the Child (CRC)

International Covenant on Economic Social and Cultural Rights (ICESCR) 1976

Universal Declaration of Human Rights (UDHR) 1948

List of regional human rights instruments

African Charter on Human and Peoples' Rights (African Charter), 1981

Charter of Fundamental Social Rights in SADC

Code on Social Security in SADC

Protocol to the African Charter on the Rights of Women in Africa, 1995

SADC Protocol on Gender and Development, 2008

List of ILO conventions and recommendations

Domestic Workers Convention No. 189 of 2011 ('Domestic Workers Convention No. 189')

The Maternity Protection Convention No.103 (Revised 1952) ('Maternity Protection C103')

The Maternity Protection Convention No.183 of 2000 ('Maternity Protection C183')

The Maternity Protection Convention No. 3 of 1919 ('Maternity Protection C3')

Recommendation (No. 165)

Recommendation (No. 201)

The Termination of Employment Convention No. 158 of 1982

Workers with Family Responsibilities Convention, 1981 (No. 156)

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Executive summary

This dissertation presents the findings of research that was carried out in two districts in Dar es Salaam region, i.e., Ilala and Temeke on the maternity rights and lived realities of female domestic workers' enjoyment of maternity benefits. Tanzania labour laws such as Employment and Labour Relation Act, 2004 and National Social Security Fund Act, 1997 incorporated the standard conditions set by the ILO concerning maternity Protection. The Tanzania Employment and Labour Relation Act, 2004 provide provisions for balancing work, family personal life and other associate rights for female workers. The main objectives of the study were as follows:

1. To find out the efficiency and enforceability of Tanzanian labour law relating to the right of domestic workers to maternity protection.
2. To find out the challenges facing female domestic workers in accessing maternity rights and benefits.
3. To find out what the law provides on issues of maternity rights and benefits in relation to the lived realities of domestic workers.
4. To find out if domestic workers are able to utilize or access fully maternity rights according to Tanzanian labour law.
5. To find out if female domestic workers and their employers are aware of their former's legal rights on issues of maternity protection.
6. To come up with recommendations to overcome the challenges facing women in accessing maternity protection rights.

To be able to achieve the study objective, the lived realities of domestic workers were explored by using different methodological approaches such as the women's law, legal centralism, grounded theory and human rights approaches. Qualitative data research, in-depth interviews, group discussions and participatory observations were some of the data gathering methods used to collect data from domestic workers themselves, employers of domestic workers government officials, trade unionists and other stake holders. A law and literature review was also carried out.

This study revealed that some of the basic labour rights which guarantee maternity leave, rights to social security and rights to breast feeding, remuneration and working hours were

provided in the law but found not to be enjoyed by domestic workers. These rights exist only on paper but not in practice.

The study also addresses the challenges faced by domestic workers in accessing maternity rights which include lack of awareness of maternity rights and benefits, lack of awareness of enforcement machinery, payment of wages below the minimum wage, the dichotomy of the private and public divide, the poor dissemination of information, the lack of written contracts of employment, and the low level of education. This study also explains how difficult it is to protect domestic workers from abuse due to the unique characteristics of their working environment (i.e., the private household which is necessarily hidden from public view).

This study recommended among other things: the enactment of specific legislation that provides for minimum standards of labour rights specifically for domestic workers; the payment of maternity benefits for domestic workers should be financed through public funds or taxes; increased budgetary funding and the recruitment of more skilled labour inspectors. The study also recommends the need of use cell phones to disseminate information to domestic workers as an effective strategy to reach this target group. The study recommended further research on maternity protection since this study was restricted to the domestic employment sector. It is important to investigate whether women employed in other areas of the informal sector actually enjoy their rights to maternity protection as required under Tanzanian labour law.

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CHAPTER ONE

1.0 INTRODUCTION AND BACKGROUND TO THE RESEARCH

1.1 Introduction

Millions of women and girls around the world enter into domestic employment in order to provide for themselves and their family. Women's participation in domestic employment has resulted in a combination of economic, social and cultural factors, including their continued role as home makers and primary care givers. Usually, women are seen as being responsible for only their homes and families. Other reasons are their limited and poor educational background as this occupation requires no particular skill or training (Ramirez-Machado, 2003: 3-4).

The domestic employment industry is an important source of wages and employment for women. With the increasing participation of women in the labour market, maternity protection and the work/family balance are essential to promoting gender equality in the work place. Equality also involves ensuring decent work for women including those categories of vulnerable workers such as domestic workers.

Internationally, protecting the maternity rights of women workers has been a core issue for member states of the ILO since its establishment in 1919. The first Maternity Protection Convention No. 3 of 1919 (called 'Maternity Protection C3') was adopted in the same year as the ILO was established. This convention was limited to women employed in a public or private industrial or commercial undertaking.

The Maternity Protection Convention No. 103 (Revised 1952) (called 'Maternity Protection C103') was adopted in 1952 and its Recommendation No. 95 extended the scope of protection to a large number of categories of women workers to include women employed in an industrial undertaking and in non-industrial and agricultural occupation including women who perform domestic work in private households.

The Maternity Protection Convention No. 183 of 2000 and its Recommendation No. 191 of 2000 (called 'Maternity Protection C183') broadened the scope of coverage to all employed women, no matter what their occupation or type of undertaking, including those women

employed in typical forms of dependent work who often received no protection. The key aim of all conventions is to enable women to successfully combine their reproductive and productive roles and to prevent their unequal treatment or abuse in employment due to their reproductive role (ILO, 2004:1).

The Domestic Workers Convention No. 189 of 2011 (called ‘Domestic Workers Convention No. 189’) is the most recent ILO convention and offers specific protection to domestic workers. It extends maternity protection to domestic workers. This is a highly feminized sector and the Convention is applied in order to improve their working conditions.

Tanzania has not yet ratified Maternity Protection C103 or C183 or the Domestic Workers Convention No. 189. However, its commitment to international labour right standards was proved by its domestication of international labour standards in and through the enactment of labour laws such as the Employment and Labour Relations Act No. 6 of 2004 (called the ELRA) the National Social Security Act No. 28 of 1997 and the Labour Institution Act. Through its ELRA, Tanzania has incorporated provisions for balancing work, family and personal life as provided under the ILO Convention on Maternity Protection. Under the ELRA an employee is entitled to maternity leave, breast feeding breaks and maternity benefits.

This study aims at exploring to what extent these provisions are applicable to domestic workers. Do domestic workers actually utilize their rights to maternity leave, breast feeding breaks or maternity benefits?

1.2 Justification for the study

Having attended various SEARCWL classes relevant to the subject, (e.g. Women, Labour, and Social Security), having conducted my field research (including interviewing women domestic workers and their employers) and having considering even my own conduct, I concluded that general women domestic workers enjoy maternity protection only on paper. These rights have not been translated into practice as result of, among other things, the lack of knowledge of the law of employees, of employers and enforcement agencies.

1.3 Definition of domestic worker

In Tanzania a ‘domestic worker’ is defined as ‘any person employed wholly or partly as a cook, house servant, waiter, butler, maidservant, valet, bar attendant, groom, gardener, washman or watchman; but an employee shall not include any such employee employed wholly or partly in connection with or in relation to any commercial or industrial enterprises’.¹

In Tanzania, domestic workers are typically young girls of school going age, school dropouts, those who get pregnant at school, or those who fail their standard seven examinations. Many of them hail from less affluent region such as Dododma, Singida and Iringa. Sometimes, workers are distant or even close relatives of their employers, and where this kind of kinship exists the working environment of domestic workers becomes more complex.

The Domestic Workers Convention No. 189 defines a ‘domestic workers’ as ‘any person engaged in domestic work within an employment relationship’ (Article 1). A domestic worker may work on a full-time or part-time basis, may be employed by a single household or by multiple employers, may reside in the household of the employer (a ‘live-in’ worker) or may be living in his or her own residence (a ‘live-out’ worker). A domestic worker may be working in a country of which she/he is not a national. The employer of a domestic worker may be a member of the household, for which the work is performed or an agency or enterprise that employs domestic workers and makes them available to households.

Article 1 of the Domestic Workers Convention C189 goes on to define ‘domestic work’ as ‘work performed in or for a household or households’. This work may include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children or elderly or sick members of a family, gardening, guarding the house, driving for the family or even taking care of household pets (ILO, 2012:1).

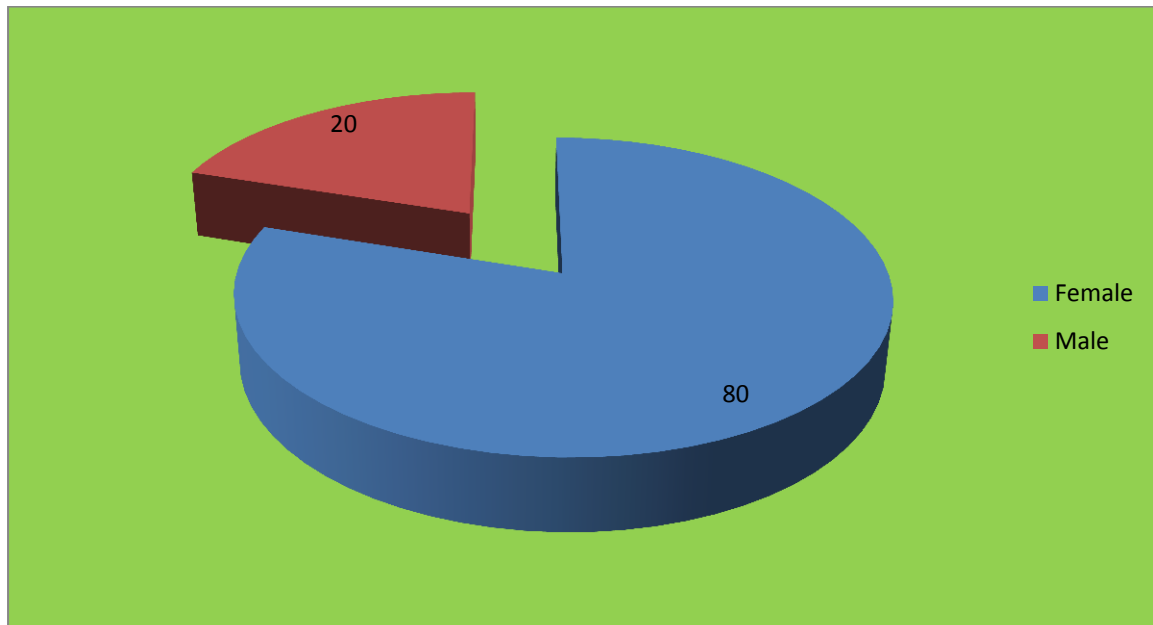
1.4 Background of the problem

Without empirical evidence, my observation is that women comprise the overwhelming majority of domestic workers. Research carried out by the ILO estimates that more than 80% of all the world’s domestic workers are women (ILO, 2010(a): 21). Typically men are

¹ Regulation of Wage and Term of Employment Order, 2010.

employed by private households as gardeners, security guards or chauffeurs. Domestic work is predominantly carried out by women workers (ILO, 2010a: 9).

Figure 1: Pie chart showing the global distribution of domestic workers by sex (Source ILO, 2010(a))



Many of such women who are employed as domestic workers are of child bearing age. But while they help their employers to combine care duties with work outside the household, domestic workers themselves face challenges in starting their own families and in providing care of their own children and household members (Adat and Chiong).

A large number of domestic workers are denied maternity law protection. Once a country is obliged to comply with such maternity laws, the problem of ensuring compliance and enforcement of such laws for the benefit of domestic workers takes centre stage.

It is common cause that falling pregnant for domestic workers results in domestic workers' losing their employment and loss of income. Since domestic workers are generally not regarded as real workers, the parenting needs and rights of domestic workers are often not acknowledged. Furthermore, in the absence of a formal employment contract and legal protection, domestic workers are at a serious disadvantage. As a result, domestic workers pursue unfavourable coping strategies such as leaving their children in their home in their

villages, desisting from breastfeeding their children, often they choose not to get pregnant for fear of being dismissed and or not being hired at all.

Within the informal economy, domestic workers are particularly invisible and vulnerable. Working mainly in private homes, domestic workers are often severely exploited. The major problems experienced by domestic workers are low wages, excessive working hours, heavy workloads, risks of violence, lack of privacy, lack of adequate health insurance and pensions and a lack of enforced legal employment protection. These rights are normally granted to other categories of workers (Caracciolo, 2011).

1.5 Statement of the problem

The Tanzanian Employment and Labour Relation Act provides for maternity protection for all female workers with the aim of ensuring that women's reproductive role should not jeopardize their economic security. Protective job security measures include: protection from dismissal and discrimination on the ground of pregnancy; the right to resume work afterbirth; and the maintenance of wages and benefits during maternity.

Furthermore the ELRA covers all employees in all sectors except those employed in the service of the Tanzania Peoples Defence Forces, the Police Force, the Prisons Service and the National Service.² The Act defines an 'employee' as an individual who has entered into a contract of employment or has entered into any other contract under which the individual undertakes to work personally for the other party to the contract and the other party is not a client or customer of any profession, business, or undertaking carried on by the individual'.³

It is, therefore, evident from the above definition of an employee by the ELRA that all categories of employees, including domestic workers, are covered by the Act, but this is far from the reality on the ground. The fact is however, that female domestic workers are not benefitting as they should from the protective provisions in the law. They are usually excluded from the application of labour laws as the result of a lack of their enforcement. The majority of women in the domestic work industry are not accorded the rights to be paid maternity leave, rights to attend to family responsibilities or to receive maternity benefits as per the mandatory requirements of Tanzania's labour laws.

² Section 4 of the Employment and Labour Relations Act, 2004.

³ Section 4 of the Employment and Labour Relations Act, 2004.

1.6 Objectives of the study

In carrying out this study the main objectives were as follows:

1. To find out the efficiency and enforceability of Tanzania labour law relating to the right of domestic workers to maternity protection.
2. To find out the challenges facing female domestic workers in accessing maternity rights and benefits.
3. To find out what the law provides on issues of maternity rights and benefits in relation to the lived realities of domestic workers.
4. To find out if domestic workers are able to utilize or access fully maternity rights according to Tanzania labour law.
5. To find out if female domestic workers and their employer are aware of the former's legal rights on issues of maternity protection.
6. To come up with recommendations to overcome the challenges facing women in accessing maternity protection rights.

1.7 Research assumptions

1. Tanzania labour laws and social security schemes on maternity rights are not adequately implemented in favour of domestic workers.
2. Domestic workers and their employers are ignorant of maternity rights for women workers.
 - 2.1 Employers do not pay domestic workers their maternity benefits but rather dismiss them from employment when they fall pregnant.
3. Domestic workers do not enjoy employment benefits such as maternity leave, time for fulfilling family responsibilities, and breast feeding during working hours.
4. Most domestic workers do not negotiate their contracts of employment with their employers.
 - 4.1 Most domestic workers enter into employment after their prospective employers negotiate with their families or relatives.
 - 4.2 Domestic workers do not negotiate maternity rights for fear of being dismissed or not being hired at all.

5. Most domestic workers who are working for their relatives are not considered employees but rather members of the family.
6. Employees and employers do not contribute to social security maternity schemes.
7. The lack of unionization of domestic workers results in their employers exploiting them.

1.8 Research questions

1. Are Tanzania labour laws and social security schemes on maternity rights adequately implemented in favour of domestic workers?
2. Are domestic workers and their employer ignorant of maternity rights for women workers?
 - 2.1 Do employers dismiss their domestic workers when they fall pregnant?
3. Do employers accord their domestic workers maternity rights such as maternity leave, sick leave, leave to attend to family responsibilities and breastfeeding during working hours?
4. Do domestic workers negotiate their contracts of employment with their prospective employers?
 - 4.1 Do domestic workers enter into employment only after their prospective employers have negotiated with their family members or relatives of the domestic workers?
 - 4.2 Do domestic workers fail to negotiate on maternity rights for fear of dismissal or not being hired at all?
5. Is it not the case that domestic workers who are working for their relatives are not considered as employees but rather members of the same family as their relatives?
6. Do employees and employers contribute to social security maternity schemes?
7. Does the lack of unionization of domestic workers result in employers' exploiting domestic workers?

CHAPTER TWO

2.0 LITERATURE AND LAW REVIEW

2.1 Introduction

The purpose of this chapter is to conduct a review of some of literature and laws relating to maternity protection. It includes a discussion of relevant ILO conventions and other relevant human rights instruments which Tanzanian ought to observe.

2.2 Literature

The issue of maternity protection has received considerable attention in the last 50 years. This has come about due to the rapidly increasing numbers of women entering the labour market. Maternity protection is the key to placing women on an equal footing with men in the workplace. Child bearing and breastfeeding are exclusively female activities traditionally and women were expected to spend much of their time pregnant or caring for young children. Thus when women started entering the workplace, affording them maternity protection put them on more of an equal footing with men and increased their chances of returning to the workplace after giving birth [Woldfogel (1998), Tilly and Scott (1987)]. However, this was not the case for domestic workers as their lived reality is that their pregnancy usually entails immediate job loss normally with limited or no rights.

Benston (1969), Hennessy (2003) and Vogel (1995) argue that the laws should be revisited to recognize women's roles within the family especially reproductive work which is unique to them. Women should not be denied job opportunities or suffer termination of employment on the ground of pregnancy because this function is critical to the survival of society and only women are biologically capable of child bearing. Motherhood is intimately tied up with child bearing.

This also was supported by Susan Bullock in her book called *Women and Work*. She argues that maternity protection is essential to the achievement of equal opportunities in employment. Maternity protection is required in order to ensure that women are not disadvantaged in relation to their biological function of bearing child. This has led a number of countries to introduce measures to ensure that women do not suffer discrimination on the

ground of pregnancy. Although Tanzania labour laws provide detailed protection for female workers in the area of maternity rights, some employers are reluctant to comply with them.

Gwisai (2006) argues that one of the most important duties of employers is to grant maternity leave and related benefits to women workers. Yet for much of their history, female domestic workers in Tanzania have not enjoyed such rights especially since household employers are less used to dealing with laws and regulations than other employers.

Globally, it has been demonstrated over and over again that it is women who are most involved in domestic services, and it is this gendered nature of their work that causes domestic services to be grossly underestimated or deemed worthless. Reynolds (1991) observed that domestic work as essentially female work. Domestic chores performed by women are considered to be an extension of unpaid domestic chores which are associated with and considered to be the sole responsibility women. In other words domestic services retain cultural stereotypes of women's as opposed to men's work. Such an attitude inevitably leads to injustice against and abuse of women domestic workers.

It is further argued that a woman is perceived to have the natural obligation to look after children, the sick and the aged due to her natural ability to give birth and nurture her offspring. This nature perspective is based on the belief that women have the hormones and instincts to be good providers of hands-on physical and emotional care and men do not (Cancian and Oliker, 2000). The belief that women are natural care-givers is passed on from one generation to another and, ultimately, becomes the norm on which generations are socialized. Care-giving is then undervalued because it is seen as natural, unskilled and a feminine activity (Cancian and Oliker, 200: 9).

It has also been observed that due to the low social status of domestic workers, women domestic workers perceive that they have no choice but to comply with their employers wishes. In the book entitled *Labour Pain for the Nation*, edited by Shirley Gunn and Rachel Visser, the following remarks of a woman domestic worker are noted:

‘Even though my employers were nice to me and allowed me a lot privileges I was paid pittance and I could go home once a year. Our going home and taking time off inconvenienced the employers. They never real consider us.

Domestic workers are had to be there for their children and we were not allowed to visit our own family.’

This story was narrated by one domestic worker called Myrtle Witboo who was a domestic worker for a white Jewish family in Cape Town, South Africa.

Domestic workers also have families. As we have said, the majority of them are women and half of them are of childbearing age. Without legal protection, domestic workers who become pregnant may be forced to quit their job and lose income when they need it most. Therefore, maternity protection is a very important issue in the improvement of the conditions of service of domestic workers. They should be legally entitled to maternity leave, cash and medical benefits, employment protection and non-discrimination, health protection and breastfeeding arrangements at the workplace. In other words, it is imperative that domestic workers should not have to choose between being a parent or providing for their families.

2.3 The ILO framework for maternity protection

2.3.1 The evolution of maternity protection

Protecting maternity rights has been a core issue for the member States of the ILO since its establishment in 1919. Over the course of its history, member States have adopted three Conventions on maternity protection (C3 of 1919; C103 of 1952; C183 of 2000), which have progressively expanded the scope and entitlements of maternity protection at work. According to these ILO Conventions maternity protection has two main aims: firstly, to ensure that women’s work does not threaten the health of the woman or her child during and after pregnancy, and secondly, women’s reproductive roles should not compromise their economic and employment security.

2.3.2 The First Maternity Protection Convention No. 3 of 1919 (‘C3 of 1919’)

This was the first maternity protection instrument to be adopted by ILO in 1919. This convention was limited to women employed in the private or public industry or commercial undertakings. It provides basic protection by entitling women to the right to 12 weeks maternity leave, the right to medical benefits, the right to income replacement to insure the continuity of income, the right to daily breaks for nursing and protection against dismissal of women during maternity leave. In addition this convention provides that cash benefits be paid by means of a system of insurance or out of a public fund. In this case, an employer is

not individually liable for these benefits. On the issue of child nursing, this convention allows half an hour twice during her working day to nurse her child. This Convention was revised in 1952 and come to be known as the Convention on Maternity Protection (Revised) 1952 (No 103).

2.3.3 The Convention on Maternity Protection (Revised) No. 103 of 1952 ('C103 of 1952') and its Recommendation No. 95 of 1952 ('R95 of 1952')

This Convention extends the scope of protection to a large number of categories of women workers including women employed in industry undertakings and in non-industry and agricultural occupations. It also includes women wage earners working at home. Article 1 of the Convention provides that:

‘This convention applies to women employed in industrial undertakings and in non industrial and agricultural occupations, including women wage earners working at home.’

C103 of 1952 extends leave entitlement to cover illness resulting from pregnancy or confinement. Article 3(5) of the Convention provides that:

‘In case of illness medically certified arising out of pregnancy, national law of regulation shall provide for additional leave before confinement, the maximum during of which may be fixed by component authority.’

Article 4 provides that the women shall be entitled to receive cash benefits and medical benefits. Article 4(4) provides that the cash and medical benefits should be provided by compulsory social security or by means of a public fund. These benefits shall be provided as matters of right to all women who comply with the prescribed conditions.

Under this convention a women who is nursing her child is entitled to interrupt her work for the purpose of nursing her child and these interruption should be counted as working hours and remunerated accordingly.⁴ This convention also provides for protection against dismissal due to pregnancy by providing that it shall be unlawful for an employer to give such women notice during pregnancy leave or to give her notice which would expire during such leave.⁵

⁴ See article 5(1) and (2) of C103 of 1952.

⁵ Article 6 of C103 of 1952.

The Recommendation on Maternity Protection No 95 of 1952 supplements Convention No 103 of 1952 in that it serves to ensure that women receive maternity leave with entitlement to cash benefits and medical care. In brief, it recommends that where a women's health makes it necessary and where this is practicable, the period of time off work for childbirth should be extended to 14 weeks. This period may be extended for medical reasons for safeguarding the health of the mother and the child in the event of actual miscarriage or the threat of a miscarriage or other antenatal or post natal complication.⁶

Paragraph 2 the same Recommendation provides that where practicable, cash benefits should be at a higher level than the minimum stipulated in Article 4 of C103 of 1952, i.e., it should be if possible 100% of women's previous earnings. Furthermore, paragraph three of Recommendations No. 95 provides that nursing breaks should be extended to a total of at least one and a half hour during the working day and adjustments in the frequency and length of the nursing periods should be permitted on the basis of a medical certificate. It also contemplates that nursing and day-care facilities should be established where women are working.

The period of protection from dismissal before and after confinement should be extended to begin on the date when the employer is notified of the pregnancy by medical certificate until at least one month after the end of the maternity leave. It also prohibits working at night and working overtime for pregnant and nursing women who are to have sufficient rest periods. Also, it provides that a women employed in work which is defined as harmful to health should be entitled to transfer without loss of wages upon presentation of a medical certificate.

2.3.4 The Maternity Protection Convention, No. 183 of 2000 ('C183 of 2000') and its Recommendation No. 191 of 2000 ('R191of 2000')

These are the latest of the ILO's maternity protection provisions. Convention 183 of 2000 constitutes a new step forward with regard to both persons covered and protection provide. In its article 2 the scope of maternity protection is extended to coverage of all employed women, no matter what their occupation or type of undertaking, including those women employed in typical forms of dependent work who often receive no protection at all.

⁶ Paragraph 1 of R95.

Convention No. 183 of 2000 and Recommendation No 191 of 2000 comprise five core elements of maternity protection and they are:

- (1) Maternity leave;
- (2) Cash and medical benefits;
- (3) Health protection at the work place;
- (4) Breastfeeding arrangements at the work place;
- (5) Employment protection and non-discrimination.

2.3.4.1 Maternity leave

A mother right's to a period of rest in relation to a child birth is a crucial means of protecting her health and that of her child immediately before and after birth.

Convention No. 183 of 2000 extends the period of maternity leave from 12 weeks (as provided in the earlier Convention) to a minimum of 14 weeks, six of which must be taken following the child's birth.⁷ Recommendation No 191 of 2000 suggests that this period be at least 18 weeks. Articles 4 and 5 of the Convention provide for the right of an extension of leave in case of illness, complications or the risk of complications arising out of pregnancy. Also, it establishes the right to return to the same work or one with the same pay upon return from leave.

C183 of 2000 like the previous Convention (C103 of 1952) provides for compulsory leave of six weeks after confinement, during which a mother must not work. Its intention is to protect a woman from being pressurised into returning to work when it could be detrimental to her health as well of that of her child (ILO, 2012).

2.3.4.2 Cash and medical benefits

The right to cash benefits during absence of work for maternity leave is an important part of maternity protection. Article 6(2) of Convention 183 of 2000 provides that the cash benefit shall be at a level that ensures that the woman can maintain herself and her child in a proper condition of health and suitable condition of living.

⁷ See article 4(1) of C183 of 2000.

Article 6(3) and 6(8) provide that the woman shall be entitled to receive not less than two thirds of the women's previous or insured earning and the payment should be provided through a social insurance or public fund or in a manner determined by national law and practice. The basic principle of payment through a social insurance or public fund is very important to protect women from discrimination in the labour market, which would be more likely to happen if employers were to bear the cost of maternity themselves (ILO, 2012). Furthermore, cash benefits are intended to replace that portion of income which is lost due to the interruption of women's economic activities, giving practical effect to the provision for leave.

As an improvement to protection article 6(5) of C183 of 2000 requires member states to ensure that the qualifying condition for cash benefits is met by a large majority of employed women. In addition article 6(6) provides that where women do not meet the qualifying conditions for cash benefits, they must be entitled to adequate benefits out of social assistance funds.

2.3.4.3 Health protection in the workplace

Article 3 of C183 of 2000 recognizes the right to health protection by requiring member states to adopt measures to ensure that pregnant or nursing mothers are not obliged to perform work prejudicial to their health or that of their children, or where an assessment has established a significant risk to mother or child.

Recommendation No 191 of 2000 which supplements C183 of 2000, ensures the right to health protection and recommends for member states adopt working conditions in order to reduce particular work place risks to pregnant or breast feeding women which are related to the safety and health of the pregnant or nursing women and their children. Measures to reduce such risk include:

- (1) The elimination of the particular risk;
- (2) The adaption of working conditions to the relevant risk;
- (3) Transfer to another, safer position, without loss of pay, when such adaption is not feasible; or
- (4) Paid leave if such transfer is not feasible.

Article 6(5) of R195 of 2000 recommends that a woman should retain the right to return to her job or an equivalent one, paid at the same rate when it safe for her to do so. In addition, Article 6(6) of 2000 recommends that she should also be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing any medical examinations relating to her pregnancy.

2.3.4.4 Breastfeeding arrangements at work

The right to breastfeed a child after returning to work is an important part of maternity protection and it has major benefits for the mother's and child's health. This right was given to nursing women because maternity leave generally expires before the end of the breastfeeding period which is recommended by the World Health Organisation. The World Health Organisation recommends the exclusive breastfeeding of babies until the age of six months. It also recommends that breastfeeding should continue for up to two years or beyond with the introduction of appropriate complementary food (Paul, 2004). C183 of 2000 entitles breastfeeding mothers the right to one or more daily breaks or a reduction of hours of work for a breastfeeding.⁸ Breaks or reduction of working hours shall be counted as working time and remunerated accordingly. The length and numbers of breaks are to be determining by national law or practice.⁹

2.3.4.5 Employment protection and non-discrimination

C183 of 2000 guarantees a woman the right to return to the same position or an equivalent position with the same pay at the same rate upon her return to work. Article 8(1) of C183 of 2000 provides for employment security by prohibiting dismissal during pregnancy, maternity leave and a period of time after returning to work. In the same article, the Convention places the burden of proof on an employer in the event of dismissal to prove that the reason for such dismissal is unrelated to the women's pregnancy or childbirth and its consequences or nursing. This reversal of the burden of proof strengthens women's employment security.

Moreover, the Convention requires member states to take measures to ensure that maternity is not a source of discrimination in employment including access to employment.¹⁰ Also article 9(2) prohibits pregnancy tests at the recruitment stage except in a very few specific

⁸ See article 10(1) of C183 of 2000.

⁹ See article 10 of C183 of 2000.

¹⁰ See article 9(1) of C183 of 2000.

circumstances. These principles have also been affirmed in the Workers with Family Responsibility Convention No 156 and its Recommendation No 165, the Termination of Employment Convention No. 158 of 1982 and the Domestic Workers Convention No 189.

2.3.5 Workers with Family Responsibility C156 of 1981 and R165

Care responsibilities for children extend beyond the birth of the child and at the end of a women worker's maternity leave. Care relates to both paid and unpaid work involving the nurturing of necessarily dependent other children, the sick, the elderly, as well as non-relational social reproduction work that is necessary to ensure the daily maintenance and ongoing reproduction of the labour force (Robinson, 2006: 322). According to Cancian and Oliker (2000: 9) it is argued that care work is gendered, as caring is usually seen as natural, unskilled and feminine work. The primary responsibility of caring for those in need of care falls on family members, mostly women.

C156 and its Recommendation 165 give considerable guidance on policies and measures which are needed to enable men and women workers to exercise their right to participate in employment while simultaneously meeting their family responsibilities. It provides in article 3 of the C156 for the need to create effective equality of opportunity and treatment of men and women workers who have family responsibilities and the need to improve their working conditions through a broad range of policies, including providing affordable and quality child care services and facilities.

2.3.6 Domestic Workers C189 of 2011 and R201

The Domestic Workers Convention No. 189 offers specific protection to domestic workers. It lays down basic rights and principles and requires member states to take a series of measures with a view to making decent work a reality for domestic workers. Domestic Workers Recommendation No 201 of 2011 supplements C189 of 2011 in that it provides practical guidance concerning possible legal and other measures to implement the rights and principles stated in the Convention. Basic rights of domestic workers set by this Convention are:

- Promote and protect the human rights of all domestic workers (see Preamble, article 3).

- Respect and protect the fundamental principles and rights of domestic workers at work namely freedom of association, elimination of discrimination in respect of employment and occupation (see article 3).
- Protection against all forms of abuse and violence (see article 5).
- Fair terms of employment and decent living conditions (see article 6).
- Domestic workers must be informed of the terms and conditions of their employment in an easily understandable manner, preferably through a written contract (see article 7).
- The payment of minimum wage (see article 11).
- Decent hours of work, normal hours of work, daily and weekly rest period, annual paid leave (see article 10).

On the issue of maternity protection for domestic workers, article 14(c) of paragraph 25 of C189 and R201 recognize the rights of domestic workers, like any other workers, to maternity benefits, social security protection and the need for a work-life balance. They acknowledge that these may require progressive steps and may be part of broader efforts to achieve them for all workers in general.

2.3.7 The Termination of Employment C158 of 1982

Article 4 of the Convention No 158 of 1982 provides that the employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking. It provides, in article 5, for a list of reasons which would not constitute a valid reason for termination of employment. This Convention specifically declares that the following grounds cannot constitute valid reasons for termination of employment: race, colour, sex, marital status, family responsibilities and pregnancy. Further it provides that absence from work during maternity leave is an invalid reason for dismissing an employee from work.

2.4 International human rights framework

2.4.1 Maternity protection provisions in international human rights instruments

The rights to maternity protection is also recognised in several international treaties, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), the

Universal Declaration of Human Rights (UDHR), SADC Protocol on Gender and Development Code of Social Security on SADC, the Protocol to the African Charter on the Rights of Women in Africa (the Women's Protocol), the African Charter on Human and People's Rights (the African Charter) the Charter of Fundamental Social Rights in the SADC (the SADC Charter).

Article 11 of CEDAW provides for the elimination of all forms of discrimination against women in the field of employment and specifically, article 11(2)(a) obliges countries to prohibit dismissal on the grounds of pregnancy. It also requires member states to introduce paid maternity leave, social benefits and established social services to enable parents to combine family obligations work responsibilities and participation in public life.¹¹ This right of care should be read in conjunction with article 7(1) of the Convention of the Right of the Child (CRC) which provides that it is the right of the child to be cared for by his or her parent. It also protects pregnancy and breastfeeding women from performing work which proves to be harmful to them. This protection was provided by CEDAW in order to prevent discrimination against women on the ground of maternity or marriage in order to improve women's right to work.

Article 11(2)(b) of the ICESR ensures the right to paid maternity leave and adequate social security benefits. It provides that special protection should be accorded to mothers during a reasonable period before and after childbirth. During such periods working mothers should be accorded paid leave or leave with adequate social security benefits.

The SADC Protocol also requires member states to enact legislation which prohibits the dismissal or denial of recruitment on the grounds of pregnancy. Article 19(3) provides:

‘State parties shall enact and enforce legislative measures prohibiting the dismissal or denial of recruitment on the grounds of pregnancy.’

It also emphasises the protection and benefits for women and men during paternity and maternity (Article 19(4)).

¹¹ See article 11(2)(b) and (c) of CEDAW.

The Women's Protocol requires member states to guarantee adequate and paid pre and post natal maternity leave in both the private and public sector (Article 13(i)).

In general, the African Charter requires state parties to ensure the elimination of every form of discrimination against women and the upholding of the rights of women and children as stipulated in International Declarations and Conventions. This means that all rights which are protected under International Conventions including the right to maternity protection must be protected by all the member states of the African Union.

The SADC Charter requires, generally, the harmonisation of minimum requirements laid down in labour legislation and, in particular, the introduction of equitable basic working conditions and living conditions, the specification of minimum rest periods annual paid leave, compassionate leave and paid maternity leave, among others. It also requires the member states to create an enabling environment consistent with ILO Conventions on discrimination and equality and other relevant instruments, so that equal opportunities for both man and women prevail. Emphasis is placed on access to employment, working conditions, remuneration, social protection, education, vocational training and career development.

2.5 The current legal position in Tanzania

2.5.1 Equal opportunity and treatment in employment

Tanzania's commitment to international labour rights standards is evidenced by its ratification of International and regional human rights instruments such as: The Universal Declaration of Human Rights, 1948 (UDHR); The Convention on the Elimination of all Forms of Discrimination Against Women (1979); The International Convention on Economic, Social and Cultural Rights (ICESR). It also ratified the most important ILO convention, Convention No 111 of 1958 on the Discrimination (Employment and Occupation) which specifically prohibits discrimination in work place. Further, Tanzania has ratified the Organization of African Unity's Charter on Human and People Rights (Banjul Charter), the Protocol to the African Charter on Human and Peoples rights on the Rights of Women in the Women's Protocol, the SADC Declaration on Gender Development, and the Charter on Fundamental Social Rights in SADC and the Code on Social Security in SADC.

The Constitution of the United Republic of Tanzania of 1977 (URT Constitution) recognizes the right to work as a basic right of a person. Article 22(1) provides that every person has a right to work. It also emphasizes the equality of each person, respect for each person's humanity and justice before the law. For example, article 13(1) of the URT Constitution provides that all people are equal before the law and are entitled, without discrimination, to protection and equality before the law.

The URT Constitution also provides for the domestication of international labour standards through the enactment of various labour laws and social security laws legislations such as Employment Labour Relations Act No 6 of 2004 which is applicable to all employers and employees except those in service of Tanzania People Defence Force, the Police Force, the Prison Service and National Service. The National Employment Services Act, 1999 provides for equal opportunity of access to employment to men and women and the adoption of affirmative action policy in employment and in public services. In addition, the National Employment Policy 2008 pledges the provision of fair and equal treatment to both men and women based on the recognition that women are disadvantaged in the world of work because of their multiple roles as producers, reproducers and providers of family care.

The ELRA and Employment Labour Relations (Code of Good Practice) Rule 2007 provide for equal opportunity and treatment of workers at the work place. Section 7 of the ELRA provides that every employer shall ensure he/she promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy and practice. Section 7(4) of the ELRA provides for protection against direct and indirect discrimination in employment policies or practice on any of the following grounds: colour, nationality, tribe or place of origin, sex, gender, pregnancy marital status or family responsibility etc. This non-discrimination clause is found in article I of CEDAW, article 2 of UDHR, article 2(2) of ICESR, article 2, 18(3) of African Charter and article 1(f) of the Women's Protocol.

2.5.2 Maternity protection provisions in terms of the ELRA

Although Tanzania has not yet ratified the following ILO Convention and Recommendations (C103 and R95 of 1952, C183 and R191 of 2000, C156 and R165 of 1981, and C189 and R201 of 2011), it has, to some extent, incorporated provisions of those Conventions into present labour law, namely the Employment and Labour Relations Act, 2004 (ELRA of 2004).

Maternity leave is covered by Part III, Sub-Part D of ELRA. In term of section 33(1) of the ELRA an employee is required to give notice to the employer of her intention to take maternity leave at least three months before the expected date of birth. Such notice must be supported by a medical certificate. Further, the ELRA provides for an eligible time to commence maternity leave and under section 33(2)(a) and (b), which provides that an employee may commence her maternity leave at any time from four weeks before the expected date of confinement or at an earlier date, if certified by a medical practitioner that it is important for the health of the mother or unborn child. This right, however, was not being exercised by domestic workers as those domestic workers interviewed indicated that they never discussed issues of maternity leave or related rights with their employers.

Furthermore section 33(6) of ELRA requires the employer to give the employee 84 days paid maternity leave or 100 days if the employee gives birth to more than one child at the same time. Maternity leave may commence at any time from four weeks before the expected date of confinement or on an earlier date if a medical practitioner certifies the necessity of leave commencing on an earlier date for the reason of the employee's health or that of her unborn child. In additional, an employee is entitled to 84 days paid maternity leave within the leave cycle, if the child dies within a year of birth.¹² According to the ELRA, an employee can have up to four terms of paid maternity leave in the course of her employment after every 36 months.¹³ Although this right is granted to all female workers, in the case of domestic workers this was not in practice on the ground. Generally, domestic workers who fall pregnant never enjoy the right to maternity leave, rather their pregnancy leads to the termination of their employment.

Further, ELRA provides for paternity leave. An employee is entitled to a minimum of three days paid paternity leave if he is the father of the child and the leave is taken within seven days of the birth of a child.¹⁴ However, the shorter period of 3 days' paternity leave and 84 days for maternity leave provided by ELRA it as perpetuates the gender stereotype that it is only women who have the responsibility for bearing and taking care of children.

¹² See section 33(7) of the Employment and Labour Relations Act, 2004.

¹³ See section 33(8) of the Employment and Labour Relations Act, 2004.

¹⁴ See section 34(1) of the Employment and Labour Relations Act, 2004.

2.5.2.1 Health protection

The ELRA provides that no employee shall work within six weeks of the birth of her child, except where a medical practitioner certifies that she is fit to do so.¹⁵ Also, a pregnant or lactating employee is protected from performing work considered to be hazardous to her health or that of her child and the employer is prohibited from requiring or permitting such an employee to work under hazardous conditions.¹⁶ Also Section 20(2) of ELRA prohibits pregnant employees from working at night two months before the expected date of confinement and before that date if the employee is no longer fit to perform night work on medical grounds. This was designed to protect lactating mothers from employers who might require employees to work just after they have given birth. The research showed, however that this was not applicable to domestic workers. Most of my respondents showed that they are likely to resort to unfavourable coping strategies by returning to work straight after giving birth and leaving their newborns alone at home or leaving them in the rural areas with their parents resulting in exposing themselves and their newborn babies to health risk.

2.5.2.2 Employment protection and non-discrimination

On the issue of non-discrimination, the ELRA prohibits an employer from discriminating, directly or indirectly, against an employee in any employment policy or practice on the ground of pregnancy, marital status or family responsibility. Furthermore, the law provides that termination of employment for reasons related to pregnancy is unfair. (Section 33(4)) of the ELRA also provides that an employee may resume employment on the same terms and conditions of employment at the end of her maternity leave). The ELRA imposes sanctions if on an employer if he/she dismisses an employee on grounds of sex, gender or pregnancy. Section 33(7) provides that any person who contravenes the provisions of subsections (4) and (5), commits an offence. My research findings showed, however, that domestic workers enjoy no such protection and once they fall pregnant their employment is terminated with impunity.

2.5.2.3 Family responsibility and child care

Although Tanzania has not yet ratified Convention No 156 of 1981 and its corresponding Recommendation No. 165, the Employment and Labour Relations Act considers the intersection of work, family and personal life, which is reflected in various forms of leave,

¹⁵ See section 33(3) of the Employment and Labour Relations Act, 2004.

¹⁶ See section 33(9) of the Employment and Labour Relations Act, 2004.

such as maternity leave, paternity leave, annual and compassionate leave.¹⁷ This protection is motivated by section 7(4)(h), (i) and (k) of the ELRA which provides that no employer shall discriminate, directly or indirectly, against an employee, in any employment policy or practice, on the grounds of sex, gender and marital status or family responsibility.

The ELRA also provides for paid compassionate leave of at least four days granted in the event of sickness or death of the employee's child, death of the employee's spouse, parent, grandparent, grandchild or sibling.¹⁸

The ELRA also provides the right of a female employee to have two hours for breast feeding her child during working hours.¹⁹ Provided that where an employee is breast-feeding a child, the employer shall allow the employee to feed the child during working hours up to a maximum of two hours per day. Section 33(9) of ELRA further protects women who are breastfeeding from performing work considered hazardous to her health or that of her child and the employer is prohibited from requiring or permitting such an employee to work under hazardous conditions.

2.5.3 Social security system in Tanzania and women workers' protection

Tanzania has not ratified the ILO Social Security (Minimum Standards) Convention No 102. The existing social security acts, however, do take into account the major provisions of this ILO convention.

Article 11(1) of the Constitution of United Republic of Tanzania recognizes the importance of social security which provides that the state authority shall make appropriate provision for the realization of a person's right to work, self-education and social welfare in times of old age, sickness or disability and, in other cases of incapacity, the state authority shall make provision to ensure that every person receives of social security.

The literature on social security in Tanzania has defined social security as the protection provided by society to its members through public measures against the economic and social distress which otherwise would be caused by the stoppage or reduction of earnings arising

¹⁷ Refer to articles 29(2)(a), 33(6), 34(1), and 34(1)(b) of the ELRA.

¹⁸ Refer to sections 34(1)(b) and 34(3)(b) of the Employment and Labour Relations Act, 2004.

¹⁹ See section 33(10) of the Employment and Labour Relations Act, 2004.

from contingencies. In most cases the contingencies are associated with either the temporary or the permanent loss of income [Haule (1994), Omari (1994) and Mallya (1994)]. Maternity was among the contingencies which mention that could cause economic and social distress. Others examples of contingencies include sickness, employment injury and occupational disease, maternity, old age, invalidity, death and unemployment.

According to the National Social Security Policy of Tanzania adopted in 2003 social security is conceived as:

‘...Any kind of collective measures or activities designed to ensure that members of society meet their basic needs and are protected from the contingencies to enable them to maintain a standard of living consistent with social norms.’

Currently, in Tanzania there are five major formal institutions that provide social security protection. These are National Social Security Fund (NSSF),²⁰ the Public Services Pension Fund (PSPF),²¹ the Parastatal Pension Fund (PPF),²² the Local Authority Provident Fund (LAPF)²³ and the National Health Insurance Fund (NHIF).²⁴ Several of these schemes, such as the National Social Security Fund (NSSF) Act, 1997, and the Local Authority Pensions Fund (LAPF) Act, 2006 provide for maternity benefits.

The NSSF Act, which to some extent covers both the formal and informal sector, provides for various classes of benefits, including maternity benefits.²⁵ A woman who is registered with the NSSF can receive maternity benefits of two types: maternity medical care and maternity cash benefit in accordance with section 45(a) and (b) of the NSSF Act of 1997.

2.6 Conclusion

The above analysis shows that Tanzania has significantly complied with the various maternity protection provisions of the several of the ILO Conventions, namely C103 of 1952

²⁰ Offering social security coverage to employees of the private sector and non-pensionable parastatal and government employees.

²¹ Providing social security protection to employees of central Government under pensionable terms.

²² Offering social security coverage to employees of both private and parastatal organizations.

²³ Offering social security coverage to employees of the local government.

²⁴ Offering health insurance coverage to pensionable employees of central government.

²⁵ See section 21(e) of NSSF Act, 1997.

and C183 of 2000), and provisions of Universal Declaration of Human Rights (Article 22²⁶), ICESR (Article 9²⁷), CEDAW (Article 14 (2)²⁸), the Code on Social Security in the SADC (articles 8 (1), 8(2), 6(4), 6(5), 6(6) and article 13(1)) which covers the rights to social security, including women's right to paid maternity leave and benefits, adequate social security benefits, non-discrimination and protection from dismissal on the ground of maternity.

Unfortunately, the research findings revealed that, these provisions are not implemented on the ground and the women domestic workers interviewed did not benefit from them.

²⁶ Every one as a member of society has the right to social security...

²⁷ State parties to the present covenant recognize the right of everyone to social security...'

²⁸ Provide that states parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure equality between men and women and shall ensure the right to benefit directly from social security programme.

CHAPTER THREE

3.0 RESEARCH METHODOLOGY

3.1 Exploring the lived realities of female domestic workers

This study aims at finding out whether domestic workers enjoy the right of maternity protection as provided by Tanzania's labour laws. To be able to achieve the study's objectives there was a need to use a methodological approach that assisted in bringing out this data. I started with the assumption that although Tanzania's labour laws protect the maternity rights of female workers, these rights are not adequately implemented. Therefore I needed to take women domestic workers as my starting point. This approach is known as the women's law approach.

The study, therefore, commenced with a collection of empirical data which involved going to the female domestic workers themselves. In other words the actual lived realities of female domestic workers and their access to maternity rights and benefits was taken as the starting point for the study.

This approach was used to explore the lived realities of female domestic workers by listening to their voices. The lived experiences of female domestic workers were used in order to get a clear picture of the relationship between the law and lived realities of domestic workers. I interviewed domestic workers because they are the ones who understand their own problems better than anyone else. This gave me first hand access to knowledge about domestic workers life experiences and observations on maternity rights and benefits.

I interviewed domestic workers and conducted group discussion in two different districts situated in the Dar es Salaam region, i.e., Ilala and Temeke. This technique of conducting interviews and group discussion provided space for women to express themselves openly and to share one another's experiences. Also, it led to the active participation of my respondents in the exchange of data about their lives and enabled them to express their views more explicitly.

The significance of this approach is that it enabled me to investigate the real problems facing domestic workers based on their own experiential data. It also enable me to examine the legal frame work such as the Constitution of Tanzania, the Employment and Labour Relation Act, 2004 and Nation Social Security Fund Act, 1997 and how they translate into action on the ground, especially for female domestic workers. From the voices and experiences of women domestic workers I came to realize that the Tanzanian labour laws were not being enjoyed by female domestic workers.

Furthermore, at the beginning of this research I had assumed that the state formal laws of the state were an important and significant regulatory mechanism relevant to the problems faced domestic workers. This is the view of legal centralism which assumes that the state law and state legal system are the only important and significant regulatory mechanism in society (Bentzon *et al.*, 1998).

I used this approach to find out what the relevant labour laws were and if they were in fact being implemented to regulate domestic employment. I did that by reading through the law and interviewing legal officers from the Ministry of Labour together with an arbitrator in charge from the Commission of Mediation and Arbitration. I also interviewed domestic workers and their employers to find out if the Tanzania labour laws proved adequate in resolving matters relevant to their contracts of employment. This approach was useful to me because it helped me understand that formal law is only part of the solution in addressing problems experienced by domestic workers.

During the course of this study and with the aid of the Grounded Approach I visited various officials to obtain from them grounded data and then triangulated it with the data obtained from domestic workers. I started with the domestic workers themselves and I found that they were not enjoying their rights to maternity. I then decided to visit the Ministry of Employment's Legal Department where I interviewed two legal officers and one labour inspector. They admitted that, despite the laws in force, female domestic workers do not receive the benefits of maternity related rights. They directed me to the Domestic Workers Desk within the Ministry of Labour and Employment, where I could get more information about the issues. The story there was the same, so I returned to the Ministry of Labour to find out what steps, if any, had been taken against employers who fail to comply with the law. The Ministry directed me to the Commissioner for Mediation and Arbitration (CMA) who has the

power to resolve employment disputes. From the CMA it emerge that only a few cases pertaining to the failure of employers to give maternity leave to their employees had come before the commissioner. The Arbitrator in charge of the CMA raised the issues of the Domestic Workers Union where most domestic workers tend to report their matters before the CMA comes to hear about them.

So I decided to visit the Domestic Workers Union (CHODAWU) and they indicated that they had solved some disputes covering unfair termination on ground of pregnancy and other cases were sent to the Commissioner for Mediation and Arbitration (CMA). In most cases, they award employees 12 months wages because most employers refused to continue employing women who become pregnant. Following the grounded approach method I was able to triangulate and validate the data which I obtained from various sources and also obtain information on emerging issues.

Protecting the maternity rights of women workers rights is an international imperative protected by international human rights instruments which establish minimum international human rights standard and stipulate how to enforce them. In order to investigate whether they are enjoyed by domestic workers, I decide to use the Human Rights Approach. This approach requires on investigation of people's lived realities and how they relate to the human rights standards which they are entitled to enjoy.

This approach is necessary since Tanzania has ratified various Human Rights Instruments such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Women's Protocol) and the SADC Protocol on Gender and Development, the Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic and Social and Cultural Rights (ICESCR) and they represent the standard against which one measures the extent to which a country like Tanzania complies with or breaches the standard. Although Tanzania has not yet ratified C183 on Maternity Protection 2000, and C 103 Maternity Protection (Revised 1952) its Employment and Labour Relations Act 2004 has domesticated some International labour standards on maternity protection.

The significance of this approach is that it led me to analyze whether domestic employment laws comply, as they should, with international labour standard (ILO conventions) and other human rights provisions.

As a result of my research, however, I discovered that these internationally recognized rights were not being extended to female domestic workers and that the government was failing to fulfil its obligations to ensure that female domestic workers enjoy their rights to maternity protection at work.

3.2 The research site

The study took place in Dar es Salaam in two District Ilala and Temeke. Ilala District comprises low and medium density areas while Temeke comprises high density areas. Temeke was inhabited by people from low income groups, while Ilala comprises with middle to high people income within society.

Ilala District was represented by Segerea, Upanga and Kariakoo whilst Temeke was represented by Temeke Wailess, Kurasini and chang'ombe. The reason from choosing these two Districts was to find out the lived realities of female domestic workers in middle, low and high income areas and the extent to which employers respect their rights to maternity protection.

The plan for this study was to interview an equal number of domestic workers in both districts. So a total of 30 respondents were interviewed 15 from each district, and the respondents were selected randomly and included married, single and divorced women; some were live-in and others were live-out domestic workers. 10 employers of domestic workers were also interviewed. Officers at the Ministry of Labour and Employment, an NSSF officer, the Arbitrator In Charge at the Commission of Mediation and Arbitration, and two trade unionists were also interviewed. Two group discussions were held, the first one was with employers of domestic workers, and the second one with domestic workers themselves. Below are tables of the people who were interviewed during the field research.

Table 1: Showing details of domestic workers interviewed

District	Area	Married	Single	Divorced	Total
ILALA	Segerea	1	4	-	5
	Upanga	2	2	1	5
	Kariakoo	2	3	0	5
TEMEKE	Wailes	1	6	-	7
	Kurasini	3	2	-	5
	Chang'ombe	3	-	-	3
TOTAL		12	17	1	30

Table 2: Showing details of Government and trade union officials interviewed

DEPARTMENT	POSITION	FEMALE	MALE	TOTAL
Ministry of Employment and Labour	Legal officer	2	-	2
	Labour inspector	-	1	1
	Domestic worker officer	1	-	1
NSSF	Operations officer	-	1	1
Commission for Mediation and Arbitration	Arbitrator In Charge	-	1	1
Trade Union (CHODAWU)	Secretary General	1	-	1
	Regional Deputy Sectary	1	-	1
TOTAL		5	3	8

3.3 Methods of data collection

The methods of collecting data were mainly qualitative. This was because of the kind of data that the study was seeking. Qualitative research has been defined as the use of small samples and the collection of data based on life histories, detailed accounts of specific life events or in-depth interview with the key informants (Bentzon *et al.*, 1998). In this study, the data was collected from women themselves and other people who are responsible for the issue of protection of pregnant for female workers. In sourcing data, both primary (as above) and secondary sources were used. Secondary sources of data were collected through:

- In-depth interviews;
- Group discussions;
- Participant observations.

3.3.1 *In-depth interviews*

Most of the data collected from the field was through in-depth interviews with domestic workers' employers, female domestic workers, Government officials from the Ministry of Employment, NSSF, CMA and Domestic Workers Union officials. The interviews were open-ended. They allowed the interviewees to express their own views freely. Most of the interviews were not conducted in their work places so that the domestic workers were able to speak freely.

3.3.2 *Group discussions*

Two group discussions were conducted. The first group discussion was conducted with employers of domestic workers. The group consisted 9 of government officials from different professions including lawyers. Some of them had enjoyed the benefit of maternity rights protection during their own employment. The second group discussion was with domestic workers and was held at a house of one of my relatives in Temeke District at the Kurasini Police Quarter area. It was difficult to organize this gathering and one of my friends who lives in that area organized it for me .The domestic workers participated well in this group discussion.

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Figure 2: Photograph of group discussion with domestic workers held at Police quarters at Kurasini area Temeke District

3.3.3 Key informant interviews

Key informants selected in this study were legal and labour officers from the Ministry of Labour, the Commissioner for Mediation and Arbitration, the National Social Security Funds Operation Officer and various Domestic Workers Union officials. They were selected because it was felt that they are people who are qualified to deal with domestic workers and know the seriousness of the problems that face them.

3.3.4 Participatory observation

In the households which I manage to visit and where I conducted interviews I passively observed the nature of the relationship between domestic workers and their employers. It was clearly that of master and servant. Master may exercise great power over their servants and this was evident in what I saw.

Other sources of collecting data were secondary sources and included library research. This comprised reading books and articles that have been written by other authors on the subject and they guided me in my field work. It was also important for me to consult international instruments, national laws and policies concerning women, work and their family responsibilities. They helped me identify and confirm what important issues to investigate in the field. I also relied on the internet because I found it contained valuable articles on the rights of maternity protection for women workers.

CHAPTER FOUR

4.0 FINDINGS AND DISCUSSION

4.1 Introduction

This chapter covers the analysis and discussion of my research findings. The findings incorporate the voices of various respondents such as employers of domestic workers, domestic workers who explained the challenges they faced in accessing maternity rights and benefits and other stake holders such as government officials and trade union members.

4.2 Domestic workers' perspective of maternity rights

Poverty, illiteracy, lack of education, and unemployment often leave women with no other choice than to engage in domestic work. All most 80% of the female domestic workers I interviewed reported that they had to work in this field because they lack education and profession skills. One worker argued:

‘This job does not require any qualification...as long as you are women and you are used to household activities you can do it.’

Another woman also said:

‘I come from poor background, my parent could not provided us with food or education. I am not educated this is the only job I can fit.’

Domestic work is generally perceived as an activity with low status and poor economic value. It reinforces traditional gender roles of women and undervalues women work in the home. Rees (1992) agrees with this by saying that the social constructions of skill depend not just upon which gender performs the task involved but also upon how those skills are acquired. Skills acquired through education, training or experience are valued and rewarded more than those that are not, such as domestic workers' work.

From the study, 11 domestic workers out of 30 interviewed reported that they fell pregnant while they were in primary school. They found it harder to secure jobs due to their level of education; consequently, they had to go into domestic employment. Most of these domestic

workers hail from rural areas in less affluent regions such as Dodoma, Singida and Iringa, and they often come from poor families. One of my respondents reported:

‘I am from Dodoma. I studied up to standard seven, due to hardship in the village I decided to come to Dar es Salaam to work as domestic worker.’

As I stated earlier, maternity protection has come about due to the need to protect women in their reproductive role. Responses gathered from female domestic workers indicated that maternity leave, child care and maternity benefit were inadequately implemented in their favour.

Based on what was said by female domestic workers interviewees, they felt that being pregnant whilst in employment was an offence and a violation of their contract of employment. They believed that upon falling pregnant, the employer had the right to dismiss them from employment. For many of them pregnancy means job termination with no access to maternity leave or benefits. One of my respondents from Upanga, who is aware of the right to maternity leave from her previous employment, in small businesses said that in this industry employers have the right to decide whether to give maternity leave or not. She further believes that with this kind of job every employer has her own rules. She believes that once she falls pregnant her employer had the right to choose what action should be taken against her. She said:

‘It is not the matter of negotiates between me and my employer the employer has the sole right on this matter. As you know our working environment is so private, we work for someone house. Employer has the right to hire and fire.’

Another respondent said:

‘When I discover I am pregnant I hide the pregnancy, because I know if my employer realize am pregnant she will fire me. And that what has happened, after she realized I was pregnant she fired me at once. She told me how I can work when pregnant and what can I do after I got birth. She thought I could not handle work and a baby.’

My research findings showed that domestic workers themselves are reluctant to demand rights to maternity leave and benefits. One of my respondents reported that she did not see the point of negotiating maternity leave with her employer because she (the domestic worker)

would not be able to deal with her own family responsibilities and continue working as a domestic works. She said:

‘As a domestic worker how can I negotiate about pregnancy issues with my employer? If I will be pregnancy and have a child how can I handle my work? Obviously my employer will employ another worker. As you know babies need more attention. It will be hard for me to handle this work which I do for more than 15 hours a day with small child I rather remain childless for now until I will get a job which I could handle both family and work but for now that will be impossible.’

Maternity provisions are the legal entitlement of all workers, as the ELRA provides for the application of its provisions to all employees except for Tanzania Police Defence Force, Police Force, Prisons Service and National service.²⁹ But most domestic workers are afraid to negotiate maternity rights and benefits for fear of not being hired or dismissed from employment. They felt that as domestic workers they do not have rights to negotiate issues of maternity rights and benefits. They believed that once they asked about or demanded maternity protection they would not be hired or they would be dismissed from employment. One of my respondents explained:

‘It is not the matter to negotiate between me and my employer. The employer has the right on this matter. As you know working environment is so private we work in someone house, employer has the right to hire and fire.’

Another one added:

‘I cannot negotiate with my employer on issue of maternity rights because that could be the reason to fire me straight away.’

Another one explained her opinion as follows:

‘If you are a housemaid to demand a maternity right is waste of time. If you fall pregnant you better find your own way to accommodate that. This is because in my experience at work. All people who went on annual leave when they come back they found their position already occupied by somebody else. What about pregnancy? I think you would be dismissed right away if you demand that leave.’

²⁹ See section 2 of the Employment and Labour Relations Act, 2004.

My research findings showed that 80% of domestic workers are ignorant about the provisions of maternity rights. For those few who did know about maternity protection, they believed that rights are for those who are in 'real' employment, such as bankers, lawyers but not domestic workers. Domestic employment was considered part of the informal sector which did not have legal rules to govern its activities. Some of my respondents had the following to say. One domestic worker, who previously worked in a restaurant said:

'When I worked at restaurant I was given two month paid maternity leave. Once I was employed as domestic worker, I discover things are different here. In this industry you cannot negotiate any right with your employers, you have to follow what you boss need not what you need as right.'

Another one reported:

'I never discuss with my employer about any leave let alone maternity leave. I think this leave is entitled only for those who work for real employment as my employer who work for the government office not me as domestic worker. When I work to my first employer I was dismissed right away when my employer realized that I had pregnant. I was not given even a time to negotiate with her on how I can handle that situation. I decided to return back to my parent in Dodoma where I gave birth to my child. Then after that I got this new job.'

The Employment and Labour Relations Act provides that dismissal on the ground of pregnancy is illegal. But for domestic workers this was not the case; once they fall pregnant they are dismissed immediately. From my interview, with domestic workers, 8 out of 30 of them were dismissed from employment on the ground of pregnant. The following are domestic workers comments on that:

'After my employer realizes that I am pregnant, she told me I can't be a maid and an expecting mother at the same time. She told me if I choose to be a mother I should go ahead but not in her house. I don't have choice so I quit my job.'

Another responded:

'I was working for the employer for six year but I was fired because I fall pregnant. I was asked to go home without any payment regardless how long I worked with them.'

The situation also gets worse for domestic workers once they fall pregnant. Employers will not consider the fact that her maid is pregnant. They make them work excessively and do not give them any assistance because they are pregnant. Usually they just keep them for a few months while they look for another maid. This is what one domestic worker said:

‘My employer did not assist me with anything although she knew that I am pregnant. She gives me a lot of work to do without considering that I am pregnant. I used to stand up almost three hour to ironed clothes, I wash clothes, dishes, mop the house. It is hard but I have nothing to do.

I know my job will end soon because of this pregnancy, because several time I heard her talking with her relatives to find for her another maid. I know that maid she will take my position. Now she keep me because she has not got one but soon she will find one she will fire me immediately.’

Domestic workers do not normally sign a written employment contract, rather they are told their conditions of employment verbally. Most of them are prepared to discuss their wages but not other rights such as annual leave, maternity leave, working hours and social security benefits. Another issue is that in this industry workers normally enter into their employment after their prospective employers negotiate with their families or relatives. Most of the time the employees were told to start work after everything had already been negotiated on their behalf. One of my respondents says:

‘I did not enter into any contract with any of my employers even the current one we just agreed verbally about what to do and payment of my salary. My cousin who found me this job she negotiate everything on my behalf with my employer.’

Another domestic worker had this to say:

‘I didn’t sign any contract all arrangements were settled with my parent.’

Moreover this study found that domestic workers who are working for their relatives are not considered employees but rather part of the family. There is a tendency among families to employ relatives as their domestic workers. Their intention is to create a relationship which is not based purely on an employment contract. The relative is then exploited as a member of the family. Most employers of these domestic workers, who are also relative promise to send

them to school, promise which is seldom fulfilled. This illegal practice was explained by the following domestic worker:

‘She is my relative we come from the same village, there is no need for her to pay me any salary, she provide me with food, clothes, etc in fact she promise to send me to school as soon as she found a maid.’

An employer of a domestic worker/ relative repeated much the same story as follows:

‘She is my sister in law, her uncle who is my husband; he took her from the village after she finished standard seven so we can help her to finance her education. For the time being she helps me with my baby when I go to work. My husband he is the one who take care of her all needs. But we had a plan for her. We plan to send her to study computer when my son at least reach 1 Year.’

A relative who works as a domestic worker for a relative is still employed as a domestic worker and nothing else. In situations such as this great care must be taken to ensure that this relationship does not become exploitative of disadvantaged women in the labour market. (ILO committee of experts).³⁰

Caring for babies and young children is the one and the most important functions of women in society. Women are considered the primary care givers of children because they are usually responsible for caring for them. Therefore, labour law allows workers the right to attend to family responsibilities in order to allow them to participate in employment while meeting their family responsibilities at the same time. The field research shows that this right was not respected in the case of domestic workers. It is common for domestic workers to be illegally fired for attending to unavoidable family responsibilities, such as taking their sick children to the clinic. One domestic worker who had been denied this right explained that one day she was late arriving at her work place because she had taken her three year child to the clinic. Her employer decided to punish her by deducting some money from her salary. The domestic worker complained:

‘Generally we as domestic workers are more affected if we fall pregnant not like other employer in the real employment, we are not given a time to attend to family responsibility like to take our children to the clinic. You cannot

³⁰ ILO Applis Database, Direct Request concerning C111to the Islamic Republic of Iran 2006.

negotiate with your employer about that because that could be the reason to fire you straight away.’

Most of them have to give up work temporarily in order to take care of their children. They go back to the village and stay there until the child is old enough to be left with his/her grandparents. Sometimes they resort to coping mechanisms which prejudice them and/or their children, e.g., they stop breastfeeding them, and leave them with their relatives in the rural areas. Thereafter they return to the city to look for another job. It is also the case that daily breast-feeding breaks are not given to domestic workers with babies. One employee had this to say:

‘I wasn’t given any break to go and nursing my child. I never discussed that with my employer I am afraid she will think I am too demanding and maybe I will lose my job.’

This denial of the right to attend family responsibilities or to receive breast feeding breaks violates the requirements of the ILO Conventions together with the Tanzania labour laws which make protective provisions for the interaction of work, family and personal life. These conventions and laws provide for leave, such as paid maternity and paternity leave, paid annual leave and compassionate leave.³¹

This study also revealed that domestic workers work for longer hours than the fixed hourly rates prescribed by law. If I compare live-in and live-out domestic workers, live in domestic workers generally have to work much longer than the law allows. Limiting leisure and rest times are a common breach of domestic workers’ rights. The findings revealed that live-in domestic workers work over 15 hours a day and most of them work on weekends. Most domestic workers claim that working hours are extended in order to deprive them of their free time. Live-in workers are often engaged in work both day and night. One worker reported that she worked from 6 a.m. up to 10 a.m. every day, and commented:

‘There is no time to rest...I rest when I go to bed and that time is almost midnight.’

Another domestic worker reported that she worked every day of the week, except on Sundays when she was given a few hours to go to church. She also commented:

³¹ Refer to section 29(2)(a), 33(6) and 34(1)(b) of the Employment and Labour Relations Act, 2004.

‘Every day I wake up 5 am to prepare children for school, I work until 10 pm evening. Except on Sundays I have given a few hours to go to church.’

Even though live-out domestic workers also work longer day hours than they should, they at least have a chance to rest in the evening in their homes. One of them explained:

‘I am working six days per week from Monday to Saturday from 7am up to 6pm. I am off on Sunday. At least when I reach home I had a time to rest.’

Long working hours and night work cause serious health problems for domestic workers, especially if they are pregnant or breastfeeding. Some health complications which may arise are miscarriages, stillbirths, foetal growth retardation or premature births (ILO, 2007).

Another issue that emerged was the grant or refusal of annual leave. On the issue of annual leave, most workers said they had not received any annual leave since they had started working. One of my respondents had been employed for four years by the same employer and claimed that she had never been on leave. She planned to go on leave at the end of the year but her employer had avoided the issue and had still not given her a proper answer.

Furthermore, my study revealed that domestic workers wages much lower than the minimum wage, some go unpaid for months at a time and other are paid erratically. Recently, in 2013, the Government of Tanzania prescribed the minimum wage for domestic workers. The current minimum wage for domestic worker is Tanzania Shillings 80,000 (about US\$47) per month. This means that out of the 30 domestic workers studied in this research as many as 25 were receiving less than the recommended minimum wage. One of them said that she does all the domestic chores, like cooking, taking care of the children and laundry, all for TZS30,00 (US\$18) per month. Making deduction from wages is also a common practice in the ‘domestic workers’ industry. One employee suffered a deduction for coming late to work because she took her child sick to the clinic. Most workers who do receive the minimum wage are those who work in low density areas and their employers confessed they paid low wages to their domestic workers because they themselves are poor.

Fair remuneration that allows for a decent living, rest, leisure and reasonable limitation working hours are universal human rights. Yet, many of those who hire domestic workers are

guilty of abusing these rights. Tanzania labour laws set standards on hours of work, as well as overtime, daily and weekly rest and paid annual leave, with the aim of achieving levels of decent work for all workers. Like any other workers, domestic workers have the right to have their working hours limited particularly when the workers reside in the household for which they work as live-in domestic workers. Since domestic workers often provide household services such as cooking, laundry, care for children etc, the reasonable limitation of working hours is a tool to ensure that such services do not involve excessively long hours. The limitation of working hours is a means of protecting the domestic worker's health, as well as her or his ability to maintain a healthy work-life balance.

Section 19(1) of the ELRA requires that no employer should allow an employee to work for more than 12 hours a day. Further, the same Act (section 19(2)) provides that the maximum number of ordinary days or hours that employees may be permitted to work is six days in any week, 45 hours in a week and nine hours in a day.

The ELRA also provides (section 23(1)) for the right to a rest period for a worker in terms of which an employee is entitled to a 60 minute break in a working day. Apart from a break in the working day, an employee is also entitled to a daily rest which is a minimum of 12 consecutive hours between ending and recommencing work as per section 24(1)(a). An employee is entitled to a weekly of rest at least 24 hours between the last ordinary working day in a week and the first ordinary working day of the next week (section 24(1)(b)). Contrary to the provisions of ELRA domestic workers are working nonstop every day of the week for more than 17 hours every day. This is clearly a form of modern day slavery.

The Tanzania minimum wage for domestic workers in 2013 was TZS80,000 (US\$ 47) per month. The Act also insists on payment of wages in cash direct to the worker. It also prohibits any deduction from an employee's remuneration unless the deduction is permitted under a written law or other valid reasons provided by the Act.³² But this was not being observed the case of domestic worker who are routinely subjected to illegal deductions from their wages. In fact one of my respondents reported to me that her salary was reduced by employer because she was late coming to work because she took her sick daughter to the clinic.

³² See sections 27 and 28 of the Employment and Labour Relations Act, 2004.

The research findings revealed much evidence of the unequal balance of power in this occupation between employer and an employee in this employment relationship. The low status of the job weakens the bargaining power of the workers and puts them at the mercy of their employers. They have no choice but to dance to their employer's tune. Domestic workers accept the reality that they are forced to work under difficult and risky working conditions just to retain their jobs.

Furthermore, the issue of social security is a whole new concept to domestic workers. They never knew the existence of this right or whether they were entitled to it. They are not aware of the importance of social security protection or the existence of social security schemes, like NSSF. I found that the payment of a monthly contribution attached to these schemes makes it more difficult for domestic workers to have access to social security because; they argue their incomes are too low and irregular. One employee confessed:

‘I never knew if we had a right to maternity leave or social security, that concept is new to me. I just heard from you now.’

After I explained the concept of social security to her argued:

‘I earn TZS80,000 per month if I contribute that 10% I will remain with nothing. If I got sick always my employer took me to the hospital. I think I don't need that social security for now.’

This was also the case when I asked them about their participation in the Domestic Workers Union although the ELRA provides for the right of everyone employee to form and to join a trade union and to participate in lawful activities of the trade union.³³ This right was also provided under the Constitution of URT but domestic workers appear not to know about such rights. In Tanzania there is one Domestic Workers Union, namely, CHODAWU, but most of my respondents whom I interviewed said they had never heard about such a union. Most of those who have now learnt about this right are afraid of joining the Union. This is because they believe that if their employer finds out they are participating in trade union activities they will lose their job. They further argue that, even if they join a union, it will be difficult

³³ See section 9(a) and (b) of the Employment and Labour Relations Act, 2004.

for them to participate in it due to the limited spare time that they have. This is what they said:

‘I don’t think if my employer discovers that I am participating in that union she will continue to employ me, because they used to exploit us. So if I will become a member I could know my right thing that many employers they don’t want us to know.’

Being denied the right to join a access to trade union usually increases their reasonable fears of persecution and further isolates them. This also increases their lack of bargaining power and forces them to comply with their employer’s every wish and command.

When I interviewed domestic workers to find out what action they took against their employers if they are illegally dismissed from work on grounds related to maternity, I found that domestic workers lack the information about or ability to bring complaints to the notice of enforcement agencies. With the exception of a few respondents most of my respondent (90%) expressed total ignorance about how to enforce their rights through e.g. the CMA. One of my respondents said:

‘I was not aware if I could lodge any claim against my employer let alone on issue of pregnancy.’

If a person is not aware of her legal rights and has no knowledge of the services available to her obviously she will be in position not to demand anything and this leads to suffering in silence. Awareness of the existence of legal rights and access to justice for them is a fundamental right for every person, especially to a vulnerable group like domestic workers. States have an obligation to provide such vital information to the people and failure to do so leads to violations of these rights.

Domestic workers who do have knowledge of how to enforce their rights are reluctant to lodge any complaints against their employers because, they argue that the judicial process is slow, bureaucratic and their cases are not given priority.

4.3 The employers' perspective of maternity rights

As the result of this study, it was revealed that employers of domestic workers felt that they had the right to create their own norms and rules for their domestic workers on the issue of pregnancy. They felt that they are not binding with the provisions of labour law on maternity rights toward their domestic workers. The duty not to be pregnant was assumed to be part of the verbal conditions of employment with their employees. One employer argued:

‘When I employ her I informed her she is not supposed to have a boyfriend. It will be an awkward situation for me if she falls pregnant in my house. I would dismissed her on the spot the same day I realize she is pregnant. Being pregnant is violation of our contract.’

Even employers who work for the government and who are aware of their duty to observe the maternity rights of their domestic workers are reluctant to do so because of their employees' view that domestic employment is not 'real' in the legal sense of the word employment. As the result, they do not grant paid maternity leave or any other benefits to their domestic workers. They argue that since they provide their domestic workers with food, shelter and clothes so they do not have to treat them as 'real' workers. One employer argued:

‘As employer I always do a favour to my maid by giving her food shelter and sometimes I take care of her when she is sick I take care of her as my own relative. I always look after her dress her so how can I treat her like someone who works in government or private office.’

For employers of domestic workers there are general views that child care and maternity benefit is impractical for domestic workers. They argue that the right of maternity leave and breastfeeding were difficult to be implemented in respect of domestic workers. The most frequently reported reason for this non-compliance with the law by employers is that if they allowed their domestic workers to break for breast feeding there would be no one to take care of their home and children. They also complain that they cannot accommodate both the maid and her child. They only way to accommodate this, they suggested, is to fire that domestic worker and to employ a new one. One Employee had this to say:

‘For my view I think that right which I benefit as employer cannot be easily implemented to domestic worker. Like that right of paid maternity leave and breast feeding it will be hard for us to implement, if you allow her to go to breast feeding at that time who will take care of your house and children while

I will be at work. Or if you stay with her how can I accommodate the maid and her child. That is impossible. The only way is to fire her and employ another domestic worker.’

Some employers felt that it was impossible in domestic employment for a domestic worker to continue her work while pregnant. They argue that the working environment of domestic workers is different with other workers. In the domestic work industry the employee engages in domestic chores such as cooking, washing dishes, laundry, which not favourable to pregnant women. They argued that pregnancy comes with certain complications like the smell of cooking food (which is part of daily work) puts them (i.e., domestic workers) off cooking and that is why employers do not allow them to become pregnant. Emphasis was placed working on the fact that the environment of domestic workers does not allow them to become pregnant. One employer argued strongly:

‘Sitoweza kumuajiri msaidizi wa kazi za nyumabani akiwa mjamzito , siwezi kabisa . niliwahi kuwa na mfanyakazi mjamzito ilikuwa matatizo. Alianza kulala siku nzima , hataki kuoika baadhi ya vyakuwa kwa kuwa hapendi harufu. Ikawa nikirudi nyumbani ndi nianze kushughulika na kazi za nyumbani. Nikaona hakuna umuhimu wa kuwa nae, ndipo nilipoamua kumfukuza na kuajiri mfanyakazi mwegine.’

(Meaning, ‘I will never have a pregnant maid in my house, never you knows pregnancy goes with some complication; I had that experience when my domestic worker fell pregnant. She started sleeping all the time; she didn’t what to cook some food because of smell. I had to bear the double burden of doing my work at my workplace and doing the house work after hours. Now what is the meaning of employing a maid? I decided to fire her and employ a new one.’)

In my group discussion with employers some participants indicated that their first choice is to employ domestic workers without a family, since, they argued those with families tended to put their own family first. Some of the employers tended to ask personal questions, like whether they (domestic workers) planned to marry or to have children. One of the participants noted that:

‘One of my conditions to employ domestic worker are for those who have no family... I prefer to employ those who are not married and they don’t have a plan for family recently..it is an awkward situation for me when a domestic worker doesn’t come to work because of her family problem like if her child sick or she wants to take her child to the clinic because in that situation who will take her position I can’t manage to employ more than one domestic workers.’

Another participant also argued:

‘When I want to employ a maid I first ask her if she had a plan for marriage or having children. If it happens she had children or having a plan for marriage I will not employing her.’

This breaches the Employment and Labour Act which prohibits harassment on the ground of pregnancy, marriage or family responsibilities.³⁴ A female domestic worker has the right to enjoy those rights as provided by law. Special measures should be taken and enforced in order to protect domestic workers so that they may participate fully in labour and family.

In this study, employer also associated pregnancy with sickness, laziness and inefficiency. Once a domestic worker is discovered to be pregnant or feared pregnant she is not hired or is dismissed from work with the argument she cannot perform her work efficiently. One of the employers argued that:

‘How can domestic worker be efficiently when she is pregnant? Obviously she will become sick and lazy.’

This was also a breach of the provision of ELRA (section 7(4) and (5)) which prohibits direct and indirect discrimination and harassment of employees on the ground of pregnancy. A domestic worker is a woman and she has the right to bear a child. In this situation she has a right, like any other worker to accommodate her right both to bear a child and to remain in employment. Laziness and sickness cannot be used as an excuse to victimize domestic workers who are really pregnant, married or have family commitments. Employers must abide by the Employment and Labour Relations Act on maternity protection in order to maintain decent working condition for their domestic workers.

From the research findings, I observed that imposing the duty to pay wages to a domestic worker who is on maternity leave is another excuse used by employers to victimize their domestic workers. On this issue there was consensus among the domestic workers’ employers that they could not afford to meet that legal obligation. This was mainly due to financial constraints as the employers said that they themselves were receipt of a salary. They

³⁴ Section 7(4) of the Employment and Labour Relations Act, 2004.

said they had to hire another domestic worker to replace the one who is on maternity leave. They argue that it is too great a burden on them to pay two domestic workers at the same time. This therefore has led them to opt to dismiss them go and look for a replacement. One employer made the following observation:

‘In this industry we don’t gain any profits. This is easy in other industry due to profits which they gain they can afford to pay paid maternity leave... but for us that little which we gain from your employment you share it with your domestic worker now the problem is when you have to paid her on maternity and the other new one which you employ for part time.’

A suggestion was made that the government should assist employers of domestic worker to pay of maternity leave and other benefits. Employers had the following to say:

‘Government should help us as women on this because we can’t afford to employ two domestic worker at once...at least they should put on mechanism where a domestic workers who are on maternity leave should be paid her maternity benefits by the government instead of leaving all the burden to employers of domestic workers.’

Article 6(8) of C183 of 2000 provides that employers are not individually liable for maternity benefits and that they should be paid through some social insurance scheme or other public funds. This is because requiring employers to pay for these benefits can turn out negatively for women workers as employers see higher costs associated with employing women workers. And thus women workers are discriminated against at the hiring stage. Taking an example of South Africa, domestic workers are covered by Unemployment Insurance Act, 2001 and are entitled to claim maternity benefits in terms of that Act. This is also applied in Thailand where they provides universal maternity health care funded by taxes. An employer is not individually liable for paying these benefits to her domestic worker.

I found in my research that not one employer paid her domestic worker while she on maternity leave. This has led me to conclude that making maternity protection a reality for domestic workers has a very long way to go.

4.4 The government's perspective of maternity rights

4.4.1 *The Ministry of Labour and Employment*

4.4.1.1 Legal officers

When I visited the Legal Department in the Ministry of Employment and Labour I found that its officers are aware that domestic workers do not enjoy the protection of the maternity rights provided for under the ELRA because of the unique nature of the working environment of domestic workers. Although ELRA applies to all employees in Tanzania, including domestic workers, these domestic workers were not receiving the benefits of the rights to maternity leave, breastfeeding break and family responsibilities. I found that it is one thing to have a law on paper, but quite another thing to put it into practice.

I interviewed 2 key informants in the Ministry being two legal officers in its legal department that about the effectiveness of the application of ELRA in relation to domestic workers. The acting head of the legal unit in that department emphasized that ELRA provides protection for all general workers and that there are no specific provisions which apply to domestic workers. She said that when dealing with issues concerning domestic workers, they just apply the ordinary provisions of the Act. She noted, however, that the working environment of domestic workers is different from those in other sectors and this made it difficult to enforce the protective maternity provision of the Act. She explained:

‘Domestic workers employment operates in private and monitoring mechanism is not effective in domestic industry to implement the law and therefore the law automatically became inadequate implemented to domestic workers.’

According to Labour Ministry's legal officers, the domestic environment is a major obstacle in enforcing the law. In terms of ELRA it is a criminal offence and unfair labour practice to refuse to comply with the provisions of the law on maternity protection. The Act lay down procedures to be followed if a complaint is raised so that, as a result ensures the implementing of the complaints procedures, fair labour standard may be enforced. It is the obligation of the state through the Ministry of Labour and Employment to ensure that rights to decent working conditions are enjoyed by all workers, irrespective of the nature of the environment of employment. This is because domestic workers are workers like any other workers, regardless their working environment. Denying female domestic workers maternity

protection as provided under ELRA and other International Human Rights Instrument is a breach the state obligations to protect them.

4.4.1.2 Labour Inspectors

Conducting inspection at the work places of domestic workers is found to be very difficult for Labour inspectors because they face many challenges when trying to do so. Getting access to private households it is not easy. A Labour Inspector in the Ministry of Labour said:

‘Domestic work is done in private. Labour inspector we are denied free access to private home of the employers.’

Another challenge faced by labour inspectors was to determine the exact nature of the working relation between employer and employee in the domestic workers Industry. The relationship between employer and domestic workers is seen more as a family rather than an employment relationship. He explained that once you enter into domestic workers’ work places for inspection you are told by the householders that there are no domestic workers in the home only relatives. It is very difficult to contradict this. It is therefore very difficult to protect domestic workers in the private households because they are ‘hidden’ within and has a member of the existence of the extended family which is a very common type of family unit in Tanzania society.

In additional, the Ministry of Labour and Employment experiences a lack of funds, working facilities and a serious shortage of man-power, as the whole country only has a total of 83 labour inspectors. If we take the number of labour inspectors, i.e. 83, it can be seen even without empirical evidence it is easy to see that there are too few of them and they are easily outnumbered by the total number of domestic workers who work in the home of Tanzania. With this ratio it is almost impossible for the government to protect effectively domestic workers against routine employer abuse.

4.4.1.3 The Domestic Workers Desk (DWD)

The Domestic Worker Desk is a special section within the Ministry of Labour dealing with issues concerning domestic workers. One of its functions is to provide public awareness about the rights and responsibilities of employers and employees in the domestic work Industry. I found out that, in collaboration with ILO, the DWD tried to conduct public

awareness through radio and television campaigns in different regions in Tanzania with the aim of educating domestic workers and their employers on the rights and responsibilities that regulate the employment relationship in the work place. However, in reality these awareness campaigns seem not to be working because, from my interviews with domestic workers, most of them are not aware of their rights, especially, in respect of maternity leave, maternity benefits and the right to breastfeed.

In finding out what role officials at the DWD play helping domestic workers whose rights are abused, an official explained that most domestic workers do not fight for their rights for fear of losing their jobs. She added that domestic workers do not feel free to complain about their concerns or to report abuses so it becomes difficult to the DWD to protect employees in this sector.

She explained that Tanzania is in the process of ratifying the Domestic Workers Convention No. 189 and the country is in full support of its application to domestic workers. This was one way in which the government could improve their working conditions to advance the cause of providing them with decent work.

It must be borne in mind that domestic workers are like any other workers who also contribute to the economy of the country. It is duty of the government, via its Ministry of Labour and other stakeholders, to ensure that domestic workers rights are respected, promoted and protected.

4.4.2 The Commission for Mediation and Arbitration (CMA)

The CMA is a quasi judicial organ vested with the power to resolve labour disputes mainly through conciliation, mediation and arbitration. All labour disputes must be first referred to the CMA for mediation. If the mediator fails to resolve the dispute, either party may refer the complaint to the CMA arbitrator or to the labour Division of the High Court.

At the CMA I found that there were only a few cases involving the failure on the part of employers to give maternity leave or the dismissal of domestic workers for enforcing their maternity protection rights. However, there were a good few cases involving domestic workers who had lodged other complaints such as non-payment of wages and dismissals on the ground of theft, lateness etc. When I asked the CMA why there were so few complaints of

dismissal on the ground of pregnancy the officer said such disputes were considered domestic disputes capable of being resolved in households as opposed to in court or legal bodies.

The Arbitrator In-Charge at the CMA also told me that most domestic workers are ignorant about the existence of the legal authorities through which they could enforce their rights. This was supported by a large number of respondents who when I asked them said that they did not take any action against their employers upon dismissal, and gave explanations like the following:

‘I was not aware if I could lodge any claim against my employer let alone on issue of pregnancy.’

On other hand a few domestic workers who do lodge complaints with the CMA, claim that the system is cumbersome and costly and mostly favour employers. And this claimed was supported by Arbitrator In-Charge, who said that most domestic workers give up fighting for their rights due to the cost and time involved in doing so. But he also recommended that, in spite of challenges faced by domestic workers enforcing their legal rights, they should not completely abandon their rights. Instead they should continue to seek remedies through the enforcement machinery because, sometimes, this approach acts like a wake-up call for employers who habitually deny them their legal rights.

When I asked him how they handle issues of the non-provision of maternity rights for domestic workers, he replied that they usually order the payment of compensation together with twelve months’ wages and the termination of employment. He argued that employers refuse to keep employees who fall pregnant and would rather pay them compensation. Also, the difficulty in executing orders was also a problem which caused domestic workers to give up their claims.

I suggested that the immediate and early enforcement of their rights would only be possible once affected workers were aware of their rights and how to enforce them. I, therefore, suggested that there should be awareness raising and capacity building strategies put in place, particularly for those in the domestic work sector in order to ensure they utilize their right to access justice.

4.4.3 National Social Security Fund (NSSF)

Act of Parliament No 28 of 1997 established the National social Security Fund NSSF. The NSSF Act covers the following categories of employees:

- (1) Private sector employees including those employed by companies.
- (2) Non Governmental Organization (NGO) employees.
- (3) Employees working for embassies in Tanzania.
- (4) Employees of organizations.
- (5) Employees of organized groups in the informal sector.
- (6) Government Ministries and Departments employing non-pensionable employees.
- (7) Employees of Parastatal Organizations.
- (8) Self employed or other employed persons not covered by any other scheme.

There are seven schemes provided by NSSF which are categorized into two terms, long term benefits and short term benefits. Long term benefits include retirement pensions, invalidity pensions and survivor pensions, while short term benefits include maternity benefits, funeral grants, employment injury and health insurance benefits.

These schemes are financed through contributions at a rate of 20% where the employer is required to deduct from employees' gross salaries the amount of the contributions, not exceeding 10% of the employee's salary and the employer adds the remaining balance to make the required contribution rate of 20%.

There are two types of registration of members: these are the registration of statutory members and the registration of voluntary members. Statutory members include all employers registered with the Fund and who are required by law to register all their employees with the NSSF. Voluntary members include any person, other than insured individuals, and employed by a contributing employer, may register with the Fund and make regular contributions on his or her own behalf as a voluntary member. Examples of these members are domestic workers, petty traders and other self employed persons.

According to NSSF's Operations Officer voluntary members who can contribute TZS20,000 (US\$ 13) per month (which is 20% of the government minimum wage) are entitled to receive all seven benefits provided by the Fund.

When I asked him about the involvement of domestic workers and their employers in contributing to the Fund, he indicated they have members in the informal sector who have registered with them as voluntary members. Many of them pay the whole 20% of the contribution requirement. Most of them have employers who contribute 15% and they deduct 5% from their salary to meet the requirement of the 20% contribution. Many of these are domestic workers who work for Asians who own big businesses and most of them make all of their employees in their business member of the Fund and contribute to the Fund. However based on his experience, domestic workers who work for ordinary individual employees are reluctant to become members of the NSSF. He admits that employees like such as domestic workers cannot easily fulfil the conditions stipulated by the law which require monthly contribution of 20% of their wages because their income is very low and it is paid irregularly.

Another problem in relation to domestic worker's access to social security is the fact that many domestic workers are not aware of the existence of the NSSF and its importance. He said that they had tried to conduct seminars to educate employers and employees about the importance of social security through televisions, radio programs and brochures.

From this finding, I concluded that Although NSSF covers the informal sectors to some extent it was not implemented to the benefit of domestic workers. This is because most of employers did not want to increase the labour costs by paying contribution on behalf of their employees. Also, the law does not compel employers in the informal sector to make contributions on behalf of their employees. Further, social security schemes in Tanzania require contributions from both employers and employees for one to qualify for the benefit, and due to that fact domestic workers are reluctant to allow employers to deduct any money from their wages because they are already very low.

4.4.4 Trade Union

The Tanzania Conservation, Hotel, Domestic and Allied Workers Union (CHODAWU) also had jurisdiction over domestic workers and is supposed to ensure that its members are not mistreated and their rights protected. Accordingly to CHODAWU's Secretary General, 70%

of domestic workers are female. Among other things, CHODAW provides education programmes to its members informing them of their rights and entitlements under the labour laws. They provide this awareness through radio, television, newspaper, brochure, and door-to-door campaigns. They are also active into market places where their target audience of domestic workers and their employers are easily reached. And they also use the local government authorities to disseminate their message. However, they face challenges in delivering information, because most of domestic workers do not have access to a television, radio, and newspaper. As most of them do not know how to read or write and cannot afford such luxuries as television and radio.

Members of the Union (including domestic workers) are offered free representation at CMA, according to Regional Deputy Secretary of CHODAWU, who confirmed that domestic workers come seeking for their help especially in disputes concerning non-payment of wages, theft etc. They received only few cases involving maternity protection. Upon receiving such a complaint they try to solve it amicably but, if the employers resist they forward the matter to CMA and there they represent the employee free of charge. However, domestic workers do not actively fight for their rights. Hence, it has become difficult for trade union leaders to defend them. The few respondents who have knowledge of the CMA decide not to fight for their rights because the procedures take too long and are cumbersome and costly.

CHODAWU tries to prepare written contracts of employment for members which contain provision regarding the basic rights, like wages, working hours, holidays, breaks, and overtime, annual, maternity and sick leave, termination of employment, pension and settlement mechanisms. However, it emerged that such detailed contracts of employment which try to increase protection of the rights of domestic employees actually end up prejudicing them because, as soon as employers receive such draft contracts they dismiss their domestic workers.

The Trade Union indicated that they expected all employers to abide by the provisions of the law. Some of the reasons normally given by employers (like lack of sufficient financial resources) are not accepted as genuine reason for failing to grant maternity benefit to their workers.

CHODAWU is in full support of the C 189 because they believe that it will help to promote the general welfare of domestic workers. CHODAWU is now lobbying and campaigning for its ratification. They are involved in a tripartite Plan with Government and the ILO to pioneer its ratification.

In spite of the efforts taken by CHODAWU to ensure domestic workers' rights are protected it has a long way to go. This is because most domestic workers are not aware of the existence of the Union. And for those few who have knowledge of the Union they are reluctant to join it for fear of dismissal by their employers once they realise that they have joined the union. Domestic workers work in the isolated condition of private households. This makes it difficult to organize them and give them limited access to the trade Union. It is obvious that workers represented by the Union have enjoying better labour rights than those who are not members.

4.5 Non-compliance with labour laws applicable to domestic workers

Ensuring compliance with and the enforcement of the law and regulations governing domestic workers are often seen as a challenge. This is largely due to the fact that their work is performed in private homes rather than in more open spaces, like factory offices or workshops. The absence of compliance and enforcement mechanisms for these rights give rise to unfair treatment and exploitation for those who are supposed to be protected by those laws (D'souza, 2010).

The above statement explains what happening in the domestic work industry in Tanzania. Although the Employment and Labour Relation Act seems to cover the employees in all sectors in Tanzania (except those employed in police force, Prisons Service, National service and Tanzania People Defence Force, as provided in it section 2 of the said Act) this is far from the actual lived reality on the ground. According to the provision of the ELRA domestic workers are also among the employees who are protected by the Act. However, because of poor enforcement mechanisms, among other reasons, the reality is that employees in the domestic work industry are not protected by the existing labour laws.

The worse scenario experienced by female domestic workers employees is that when they perform their natural human function of bearing children during their employment they

receive no maternity leave and they get fired (i.e., illegally dismissed). This is a clear breach of the ELRA which has special maternity provisions which apply to this very situation. Employers immediately employ another employee to take the place of the pregnant worker. If she is lucky enough stay in her job, a pregnant domestic worker is not given the right to breastfeed nor have access to social security schemes although such rights are provided for under ELRA and NSSFA.

It is not common for domestic workers to enforce their rights in the CMA, the Labour Court, or through their trade union because of their lack of awareness about such enforcement mechanisms, their lack of trust in such adjudication mechanisms, the cost of using such mechanisms and also because of the long time it takes to decide a case.

The Tanzania Minimum Wage Rate in 2013 is TZS80,000 (US\$47) and the ELRA provides for limited working hours for all employees (section 19 (2)). However non-payment, late or irregular payment of wages are common practices suffered by domestic workers. The majority of them are not paid the national minimum wage of TZS80,000. The low payment of wages prevents domestic workers from being able to make contribution to social security schemes and therefore breaches their rights to access social security. Long working hours is also a common phenomenon for domestic workers. Domestic workers work for more than 12 hours a day and more than 6 day a week time apart from overtime or night work. The worst thing is that most domestic workers are working as live-in domestic workers and therefore, they are regularly subjected to working overtime prescribed by law. This is contrary to ELRA (section 19(2)) which requires an employee not to work for more than 9 hours per day or for more than 6 days per week. Other rights, like rest periods, holidays and annual leave are never observed in the case of domestic workers.

The ELRA provides for the right of workers to join trade unions (section 9(a) and (b)). However, joining a trade union is not a common practice in domestic industry. Most domestic workers are not aware of the existing of the domestic workers trade union, CHODAWU, and the few who are aware of the Union do not join it for fear of losing their jobs. Thus, domestic workers lack the bargaining power because they are not members of trade unions. Domestic workers therefore are tied to the wishes of their employers, even in cases where their working conditions are well below the prescribed minimum labour standards.

Therefore, although it is clear that domestic workers are included within the legal protection of maternity benefits, enforcing compliance with the provisions in the work place is very poor indeed.

4.6 Challenges facing domestic workers when accessing maternity rights

4.6.1 Lack of awareness

During my study it has been noted that most domestic workers are not aware of their labour rights (like maternity leave, maternity benefits and breastfeeding). Also they are not aware if there is any enforcement machinery where they can seek remedies of these rights. The ELRA provides remedies for the breaches of maternity protection rights for all female workers and the NSSF Act provides for social security scheme including maternity schemes. It also provides for procedures which one can follow to enforce his or her rights if they are breached. The Labour Institution Act also provides for institutions such as CMA, and Labour Court where one can forward a dispute arising in an employment relationship. It emerged that domestic workers are not enjoying these rights. No one, however, has ever complained of not receiving them and this, in my opinion, contributed also to the lack of awareness.

The Domestic Workers Labour Desk and the Domestic Workers Trade Union, CHODAWU, creates awareness among employers and employees on labour rights through radio, television, brochures, etc. However, most of the domestic workers I interviewed have never received this information. Therefore, they are not aware of their rights.

This lack of awareness of their labour rights was taken advantage of by employers who did not observe the rights of domestic workers, rather, they created their own rules and conditions for their employees, like prohibiting them from falling pregnant and not giving them maternity rights and benefits. As result, domestic workers do not have any other choice but to accept this situation because of their ignorance.

4.6.2 Payment of wage below the minimum wage

It was found that the in domestic work industry female domestic workers are receiving an income which is below the minimum monthly wage of TZS80,000 (US\$47). Most of my respondents receive wages range between TZS30,000 (US\$18) to TZS60,000 (US\$35) per month. The situation is even worse if an employee is related to an employer because she is

not even given a swage but rather food, clothes, etc. I asked myself how a domestic worker who has family can survive with such little money which is sometimes paid on an irregular basis. On such small or no income at all it must be very difficult or impossible for domestic workers to meet their own family's needs let alone contribute to social security schemes.

The low payment of wages emerges as one of the reasons for failure to access social security schemes which require a contribution of 20% of monthly wages.

4.6.3 Lack of contract of employment

The contract of employment that governs the employer and employee relationship is very important in any employment relationship. This is because the contract of employment establishes the right and obligations of the parties involved in that employment. The basic rights like wages, working hours, breaks, overtime, leave annual and maternity settlement of disputes, etc., must be shown in a written contract of employment. Although ELRA establishes the conditions of employment that that an employees may enter into written agreement with her employer, the lack of a written contract makes it difficult for domestic workers to obtain obligatory benefits, like maternity leave, maternity benefits and social security. This is also underlined by the fact that, frequently, the contract is of an oral nature and in most cases, covers only a few terms, like wages and working days. This fact presents the workers with the extra difficulty of proving the existence of a contractual working relationship in case of controversy.

4.6.4 Poor dissemination of information

From my interview with the key informants involved in the welfare of domestic workers, it emerged that they create public awareness of labour rights among employers and domestic workers though television, radio, newspapers, brochures. Domestic workers, however, have no opportunity to watch television, read news papers or listen to the radio. The result is that most of my respondents do not receive the information about their rights and become ignorant of them.

It is evident that these forms of dissemination of information are not effective and not reaching domestic workers because they work in an environment whose conditions are very demanding and under the complete control of the owner of the house.

4.6.5 Public and private dichotomy

Traditionally understood, the law is divided into two spheres, the public (where the law regulates the actors) and the private (where the law does not apply). Feminists argue that this division is a disadvantage to women because women have been long associated with the private sphere. This division has historically excluded women from the protection of law.

This division of applicability of law occurs in the domestic work industry. My respondents regarded domestic work as being private work. Employers of domestic workers felt that domestic workers are directly under their control and a third party cannot enter into their private home. They believe that they have the power to create their own rules in their home and no one is entitled to interfere with them. One of the employers argued:

‘She works in my house where I have my own rules. She has to follow my rules. If I say I don’t want pregnant workers that is my rule and she has to obey.’

Although ELRA provides for the rights of maternity protection, employers felt that the law should not be applicable in their homes. They ignore the provisions of the law and create their own rules and whatever they feel suits them. Maternity rights were believed to be for employees working in the public sector excluding domestic workers who work in private households. Providing them with food, clothing, shelters was sufficient reason to distinguish them from other workers who they termed are engaged in ‘real employment’.

Domestic workers agreed with these views to some extent. They believed that their employers have all power over them because they work in their private homes. To them, maternity rights are associated with violating the employer’s private domain, in that when domestic workers fall pregnant it inconvenienced their employers. Domestic workers acknowledge the fact that their work place is the private household of an employer who has control over it. It was, therefore, their view that it is not right for them to demand rights to maternity and other associated rights if an employer decided not to grant them.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This study analyzes maternity rights in Tanzania and the lived reality of female domestic workers' enjoyment of maternity benefits. The findings confirmed that domestic workers are among the most exploited workers. It has been revealed that the lived reality of domestic workers proved domestic workers did not enjoy maternity rights, maternity benefits, time for breastfeeding and other rights associated with it.

This study revealed that most of the benefits provided in International Convention on Maternity Protection are already provided for in Tanzanian's existing labour legislation, namely, the Employment and Labour Relations Act, 2004 and the National Social Security Fund Act of 1997. However, domestic workers have not ever utilized the benefits provided in the current labour laws. From the lived experiences of domestic workers, it was found that these laws exist only on paper but not in practice. Some of the basic labour rights which are guaranteed in labour laws, such as maternity leave, rights to social security, and rights to breastfeeding, remuneration, and working hours, were provided in the law but were not accessed by domestic workers.

The study also explains how difficult it is to protect domestic workers from abuse due to the specific characteristics of this category of worker, namely its invisibility. This invisibility derives primarily from the unique characteristics of the work place itself, the private household. Employers felt they have control over their domestic workers who work in their private domain. Domestic workers themselves felt that they have to comply with the wishes of their employers because they work in their private domain. In addition, labour inspections, dissemination of information and enforcement of legislation are difficult to enforce against private householders.

The study also addresses the challenges faced by domestic workers in accessing maternity rights, which includes lack of awareness of maternity rights and benefits, lack of awareness of enforcement machinery, payment of wages below the minimum wage, the dichotomy of

private and public divide, the poor dissemination of information, the lack of any written contract of employment, the low level of education and gender stereotypes.

5.2 Recommendations

Since the Tanzania Employment and Labour Relations Act offers protection to employees generally, it was not possible, however, to compare domestic employees who work in private with other employees who work in public. Therefore I recommend the enactment of specific legislation that provides for minimum standards of labour rights for domestic workers, specifically.

Although the law is needed to protect women from discrimination (as discussed above) there is a greater need for the transformation of social attitudes toward women within society. Such transformation must include social recognition and appreciation of women's domestic work.

Also, there is a need for public awareness raising programmes and dissemination of information in effective ways so that information may reach target groups, i.e., domestic workers. I suggest cell phones can be used to disseminate information to domestic workers. This was because during my study I found that most of domestic workers own cell phones. They can be used as part of an effective strategy to reach more workers, while raising public awareness about the issues.

Thirdly, I recommend that the payment of maternity leave and benefits for domestic workers should be financed from public funds or tax, rather than by employers. This will reduce labour costs for employers of domestic workers who are themselves individuals (usually dependent on a small income) as opposed to income generating companies. I believe that this would reduce the incidence of violations of the maternity rights and benefits of domestic workers.

Fourthly, I recommend that the labour inspectorate should be well funded and equipped with enough skilled staff to be able to carry out inspections professionally and frequently so as to ensure domestic workers' rights are enforced accordingly.

Fifthly, and more generally, I recommend Government leaders, Ministry of Labour, CMA, NSSF, CHODAWU and other stake holders entrusted with the duty of to enforce labour laws should come up with the strategies to improve their commitment to their task of ensuring decent working conditions for domestic workers.

There is a need for the government to reform the current system of social security to ensure that it is implemented in order to benefit various workers in the informal sector, including domestic workers, who are excluded from the current system of social security.

Last, but not least, I would like to recommend further research be conducted on maternity protection since this study was restricted to the domestic employment sector. This study may be taken as a starting point to investigate whether women employed in other areas of the informal sector actually enjoy their right to maternity protection, as required under Tanzania labour laws.

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Appendices

Appendix 1: Contract of employment (in Swahili)

FOMU YA MKATABA WA AJIRA

Makubaliano haya yanafanywa

BAINA YA

.....
(ambaye hapa anatajwa kama "Mwajiri")

Anwani ya Mwajiri ya mahali, Posta na Barua-pepe

.....
NA

.....
(ambaye hapa anatajwa kama "Mwajiriwa")

Umri: Jinsi:

Anuani ya mwajiriwa ya mahali, Posta na Barua pepe

1. KUANZA

Makubaliano haya yataanza tarehe na
Kuendelea kisheria hadi

2. MAHALI ALIPOAJIRIWA

3. MAHALI PA KAZI

4. MAELEZO YA KAZI

4.1. Cheo:

4.2. Majukumu:

.....

SHERIA YA AJIRA na Mahusiano Kazini (Kanuni za Utendaji Bora)
T.S.Na. (Linaendelea)

5. MAJARIBIO

Mkataba huu unazingatia kipindi cha majaribio cha wiki/miezi
.....kuanzia tarehe ya kuanza kazi.

Madhumuni ya kipindi hiki cha majaribio ni kutathmini kama mwajiriwa ana uwezo au anafaa kwa kazi hiyo. Iwapo mkataba utakoma katika mwezi wa kwanza wa ajira, inatakiwa taarifa ya siku saba kwa maandishi itolewe.

6. MSHAHARA

- 6.1 Mshahara wa mwajiriwa wa kuanzia utakuwakwa siku/wiki /mwezi
- 6.2 Mwajiri atakuwa na haki ya posho/malipo yafuatayo kwa mali bonasi:
.....
- 6.3 Mshahara utakuwakwa siku/wiki/mwezi;
- 6.4 Kipindi cha malaipo ya mshahara kitakuwa kila wiki/mwezi na mshahara utalipwa tarehe
- 6.5 Mwajiri amekubali makato yafuatayo:-
.....

7. SAA ZA KAZI

- 7.1 Muda wa kawaida ya kufanya kazi kila siku utakuwa kuanzia saa hadi
- 7.2 Wiki ya kawaida ya kazi itaanziana kuishia
- 7.3 Kazi za ziada zinaweza kufanywa kukiwa na makubaliano
- 7.4 Mwajiriwa atalipwa ziada kwa viwango vifuatavyo:-
.....

KUFANYA KAZI KATIKA SIKU ZA MAPUMZIKO

Iwapo mwajiriwa atafanya kazi katika siku za mapumziko, mwajiriwa atalipwa mara mbili ya mshahara wa kawaida kwa muda aliofanya kazi.

9. SIKU ZA SIKUKUU

Mwajiriwa atastahili malipo ya mshahara kwa kila siku ya sikukuu.

Kazi katika siku ya sikukuu inayoliopwa itafanyika kwa makubaliano.

Pale ambapo mwajiriwa atafanya kazi siku ya sikukuu, mwajiriwa atalipwa mara mbili ya mshahara kwa kila saa atakayofanya siku hiyo.

10. LIKIZO YA MWAKA

Mwajiriwa ana haki ya kupata likizo yenye malipo ya siku 28 katika mzunguko wa kila mwaka. Siku hizi zitajumuisha siku zozote za sikukuu zinazoangukia katika kipindi hicho. Mzunguko wa likizo kwa madhumuni ya likizo ya mwaka una maana ya kipindi cha miezi 12 mfululizo tangu ajira yake ianze au kumalizika kwa mzunguko tangu likizo iliyopita.

Likizo ya mwajiriwa itachukuliwa kuanzia tarehe hadi..... au wakati mwingine kwa kuamuliwa na mwajiri baada ya kushauriana na mwajiriwa.

Idadi ya siku inawza kupunguzwa kutokana na idadi ya siku za likizo ya dhaarura iliyotolewa kwa maombia ya mwajiri.

Malipo ya likizo yatatolewa mapema kabla ya likizo.

Mwajiri hataamuru au kumruhusu mwajiriwa kumfanyia kazi mwajiri wakati wowote wa likizo.

LIKIZO YA UGONJWA

- 11.1 Kulingana ka Kifungu cha 32 cha Sheria ya Ajira na Mahusiano Kazini, Mwajiriwa anastahili likizo ya ugonjwa yenye malipo ya siku 126 katika mzunguko wa likizo, kama atakuwa na uthibitisho wa vyeti vya daktari kwa kila tukio wakati alipochukua likizo ya ugonjwa. Malipo yanayotolewa na mwajiri, hata hivyo, hayatahitajika kama mwajiriwa anastahilai alikizo ya ugonjwa yenye malipo chini ya sheria, mfuko au makubaliano yote ya pamoja.

11.2 Malipo ya likizo ya ugonjwa yatakokotolewa kama ifuatavyo:-

- a. Siku 63 za kwanza zitalipwa mshahara wa kawaida; na
- b. Siku 63 za pili zitalipwa nusu ya mshahara anaopata.

11.3 Kwa madhumuni ya likizo ya ugonjwa, mzunguko wa likizo ni kipindi cha miezi 36 ya ajira kuanzia siku ya kuanza ajira au kuisha kwa mzunguko wa miezi 36 ya likizo ya mwsho ya ugonjwa.

11.4 Mwajiriwa atamjulisha mwajiri mapema iwezekanavyo iwapo itatokea kushindwa kufika kazini kutokana na ugonjwa.

12. LIKIZO YA UZAZI NA ULEZI (KWA BABA NA MAMA)

Mwajiriwa atakuwa na haki ya likizo ya uzazi (mama) au ya Ulezi (baba)

13. UKOMO WA AJIRA

13.1 Mkataba huu unaweza kusitishwa na upande wowote kwa kuupatia upande mwingine taarifa ya wiki/miezi

13.2 Taarifa itatolewa kwa maandishi kwa muda usiopungua kipindi kilichotajwa kwa kueleza sababu za kusitisha ajira na tarehe ambayo taarifa imetolewa.

13.3 Wakati wa kusitisha mkataba, mwajiri lazima ampatie mwaajiriwa hati inayoelezea kazi alizofanya.

14. MALIPO YA KIINUA MAGONGO

Mwajiriwa anastahili malipo ya kiinua mgongo yasiyopungua mshahara wa siku saba kwa kila mwaka uliokamilika wa kufanya kazi mfululizo hadi muda usiozidi miaka kumi, amabapo ajira ilikatishwa na mwajiri na mwajiriwa amemaliza muda usiopungua miezi 12 mfululizo kazini.

Mwajiriwa hatatahili malipo ya kiinua mgongo kama kuachishwa kazi kulitokana na sababu za –

14.2.1 Mwendo mbaya; au

14.2.2. Kukosa uwezo, kutohitajika au mahitaji ya kiuendeshaji, na kama mwajiriwa bila sababu amekataa kukubali kazi au ajira mbadala.

15 MASHARTI MENGINE YA AJIRA AU MAFAO

16 MATUMIZI YA SHERIA

Mkataba huu utatafsiriwa na kutumiwa kulingana na vifungu vya Sheria ya Ajira na mahusiano Kazini.

Pale ambapo utatokea mgongano wowote baina ya Mkataba huu na Sheria ya Ajira na Mahusiano Kazini, vifungu vya Sheria vitatumika kama masharti ya Mkataba huu.

Mwajiriwa atatahili mafao mengineyo yoyote yaliyoelezwa na Sheria ya Ajira na Mahusiano kazini, yalivyokubaliwa na pande mbili.

UMESAINIWA NA:

.....
MWAJIRIWA

.....
TAREHE

.....
MWAJIRI

.....
TAREHE

* Mkataba huu utatolewa katika nakala mbili halisi, zitakazosainiwa na pande zote mbili, moja na mwajiri ya pili na mwajiriwa.

Appendix 2: Translation into English of contract of employment in Appendix 1

EMPLOYMENT CONTRACT

This contract of employment is entered into in between

.....

(Hereinafter referred as employers)

Physical address' postal address, email

.....

And

.....

(Hereinafter referred as Employee)

Age..... sex.....

Physical address, postal address, email address

COMMENCEMENT OF EMPLOYMENT/CONTRACT

This contract will begin onand continue until

PLACE OF RECRUTMENT

PLACE OF WORK

.....

JOB DISCRIPTION

Job Titled

Duties

.....

.....

.....

The Employment and Labour Relation Act (Regulations)

T.S.Na. (Continue)

PROBATION PERIOD

A probation period will apply for the first Week(s)/ Month (s) of employment. During this time employer will assess worker performance. Whereby this contract terminated during the first month of commencement of employment, employer has to give employee 7 days written notice.

WAGE

The employee wage shall be starting fromon the last working day/a weekly/ monthly/

The employee shall be entitled to the following allowances/bonus

Employee wage shall be on the last working day/a weekly/ monthly/

Payment of wage shall be on the last working day/a weekly/ monthly/ onday of the month.

An Employer is agreed to the following contribution:

HOURS OF WORK

Normal working hours will be from.....to.....

Working week will be starting on.....ending on.....

Overtime will be worked as agreed between parties

Overtime will be paid at the following rate:

.....

WORKING ON WEEKLY REST PERIODS

If the employee works on weekly rest period the employer shall pay the employee double the employee's basic wage for each hour worked on that day.

PUBLIC HOLIDAYS

The employee will be entitled to be paid on every public holiday.

Any work on public holidays will be on agreement between parties.

If the employee works on a public holiday the employer shall pay the employee double the employee's basic wage for each hour worked on that day.

ANNUAL LEAVE

The employee is entitled to at least 28 consecutive days' paid annual leave in respect of each leave cycle of 12 months, and such leave shall be inclusive of any public holiday that may fall within the period of leave

Such leave should be taken fromto..... an employee may commence maternity leave fromto.....

Or an employer may determine when the annual leave is to be taken on agreement with employee.

The number of days for annual leave may be reduced if an employer at the request of the employee; employer had granted employee paid occasional leave.

An employer shall pay an employee the remuneration the employee would have been paid had the employee worked during the period of leave before the commencement of the leave.

An employer shall not require or permit an employee to work for the employer during any period of annual leave

SICK LEAVE

Subject to section 32 of Employment and Labour Relation Act an employee shall be entitled to sick leave for at least 126 days in any leave cycle on the basis o medical certificate. An employer shall not be require to pay an employee for sick leave if the employee is entitled to paid sick leave under any law, fund or collective agreement.

Sick leave shall be calculated as follow:

The first 63 days shall be paid full wages.

The second 63 days shall be paid half wages.

For the purpose of sick leave, leave cycle should be 36 months from the first day of employment or ending of leave cycle of 36 months of sick leave.

An employee shall notify the employer as soon as possible in case of his/her absence from working through illness.

MATERNITY LEAVE

The employee will be entitled to pay maternity leave and paternity if an employee is a father of the child.

TERMINATION OF EMPLOYMENT CONTRACT

Either party can be terminate this agreement with week/ month notice

Notice must be given in writing stating the reasons for termination and the date on which the notice is given.

On the termination of employment of contract, the employer shall issue to an employee a prescribed certificate of service.

SEVERANCE PAYMENT

If an employer terminate the employment contract shall pay the employee severance pay of at least equal to seven days basic wage for each complete year of continua service with employer up to maximum of ten year, where an employee has completed 12 month continues service with employer.

14.2 An employee shall not be entitled to severance pay if:

14.2.1 Termination was fair on ground of misconduct.

14.2.2 Terminated on grounds of capacity compatibility or operational requirements of the employer but who unreasonably refuses to accept alternative employment with that employer or any other employer.

OTHER CONDITIONS OF EMPLOYMENT OR BENEFITS

APPLICATION OF THE LAW

This contract shall be interpreted in accordance with provisions of the Employment and Labour Relation Act.

If conflict arises between this contract and the law, the provisions of the Employment and labour Relation Act shall apply as term of this agreement.

The employee shall be entitled to any other benefits provided in the Employment and Labour Relation Act as agreed between the two parties.

SIGNED BY

.....

EMPLOYEE

.....

EMPLOYER

.....

DATE

.....

DATE

This contract shall be produced in duplicated which shall be signed by both parties; one part y employer and the other by employee.

Appendix 3: Brochure prepared by CHODAWU (in Swahili)



MKATABA NAMBA 189

Unaohusu kazi zenye staha kwa wafanyakazi wa majumbani

Juni, 16, 2011 kongamano la kimataifa la Shirika la Kazi Duniani lilipitisha Mkataba kuhusu kazi zenye staha kwa wafanyakazi wa majumbani.

Mkataba huo unajulikana kama

“mkataba wa wafanyakazi wa majumbani”

Lengo la mkataba huo ni kuwapatia haki za msingi wafanyakazi wa majumbani kama zifuatazo:

MUDA WA KAZI

Wafanyakazi wa majumbani wafanye kazi kwa masaa yanayofanana na wafanyakazi wengine. Aidha, wapate muda wa mapumziko, malipo ya likizo na muda kwa ajili ya shughuli binafsi.

MALIPO

Mfanyakazi wa majumbani alipwe mshahara kwa viwango vilivyopangwa kisheria. Mshahara huo uwekatika fedha taslimu.

Mshahara huo unaweza kuwa kwa njia ya Hundi kwa makubaliano kati ya mwajiri na mfanyakazi.

AFYA NA USALAMA KAZINI

Mfanyakazi wa majumbani ana haki ya kufanya kazi katika mazingira ya afya na usalama.

Barua pepe: chodawu@cats-nets.com



HIFADHI YA JAMII

Mfanyakazi wa majumbani ana haki ya kujiunga na mifuko ya Hifadhi ya Jamii.

UMRI WA KUFANYA KAZI MAJUMBANI

Umri unaostahili kufanya kazi za majumbani ni miaka 18. Aidha, umri chini ya miaka 15 haruhusiwi kabisa kufanya kazi za majumbani.

HAKI YA WAFANYAKAZI WA MAJUMBANI WAISHIO NA WAAJIRI

Mfanyakazi wa majumbani anayeishi na mwajiri apewe haki, maisha yenye staha na faragha ya mfanyakazi iheshimiwe.

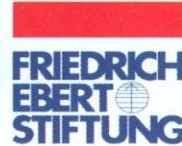
HAKI YA WAFANYAKAZI WA MAJUMBANI WAHAMIAJI

Mfanyakazi wa majumbani anayefanya kazi nje ya Nchi anakotoka apewe mikataba ya ajira ya maandishi kulingana na makubaliano yao na sheria za Nchi.

WAKALA WA AJIRA YA WAFANYAKAZI WA MAJUMBANI

Wakala wa ajira ya wafanyakazi wa majumbani ni lazima wafuate sheria za Nchi.

Kwa mawasiliano zaidi wasiliana na:



CHODAWU Makao Makuu,
S. L. P. 15549,

Simu: 0222110559,

Faksi: 0222110559,

Barua pepe: chodawu@cats-nets.com

Dar es salaam – Tanzania.

Appendix 4: Translation into English of brochure contained in Appendix 3

CONVENTION No. 189

Concerning Decent Work for Domestic Workers

On 16 June 2011, the International Labour Conference of the International Labour Organization adopted the Convention concerning decent work for domestic a worker, which is also referred to as “The Domestic Workers Convention”

The convention Offer specific protections to domestic workers. It lays down basic rights and principal as follows:

HOURS OF WORK

Domestic workers shall enjoy equal treatment like any other worker in their country with respect to normal hours of work, overtime compensation, periods of daily and weekly rest, and annual paid leave.

REMMUNERATION

Domestic workers shall be paid according to minimum wage set by the country. Payment of wage must be in cash directly to the worker. Payment by cheque should be upon worker consent.

OCCUPATIONAL SAFETY AND HEALTH

Domestic workers shall have the right to safety and health working environment

SOCIAL SECURITY

Domestic workers shall have the rights to social security protection

STANDARD CONCERNING CHILD DOMESTIC WORKERS

Minimum age for domestic workers should be 18 years old. It is strictly prohibited to work as domestic workers at the age below 15 years old.

STANDARD CONCERNING LIVE-IN WORKERS

Live-in domestic workers shall have the right to decent living conditions that respect their privacy.

STANDARD CONCERNING MIGRANT DOMESTIC WORKERS

Live-in domestic workers shall receive a written contract that is enforceable in the country of employment.

PRIVATE EMPLOYMENT AGENCIES

Measures shall be put in place to regulate the operation of the private employment agencies.

Appendix 5: Photographs of domestic workers



Domestic worker at Ilala



Domestic Worker at Temeke