

Domestic Workers' Treatment under Ethiopian and South African Laws

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Abstract

Today domestic workers' treatment across the globe differs substantially depending on the availability of the appropriate legal regime and the actual implementation of these laws. It is undeniable that there are huge differences in enacting laws to ensure respect for the rights of domestic workers between Ethiopia and South Africa. On the contrary, although Ethiopia has obligations under the International Labour Organization (hereinafter referred to as the ILO) conventions and national laws, so far, Ethiopia has not adopted any legislative measures to recognize domestic workers. However, one thing certainly describes both countries in a similar vogue; that is, regardless of differences in terms of having legal regimes to protect domestic workers, a practical and close examination of the life of domestic workers on the ground in both countries appears the same it is oppressive and characterized by exploitation. Though South Africa performed better concerning formulating enactments that are pertinent to ensure the protection of the rights of domestic workers that could perhaps serve as caveats for Ethiopia yet, practically both countries are not living up to their obligations and international standards, especially the ILO Convention No. 189 on Decent Work for Domestic Workers and its Antecedents, and other international human rights treaties.

Keywords: Domestic workers; Labour law; Protection; Ethiopia; South Africa

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1. Introduction.

Domestic work has been an event that occurs on a global scale and perceived to be crucial for the normal functioning of the outdoor economy.¹ It hires large numbers of population all over the world, many of whom are mostly from the indigent section of the society with little or no education.² Though there is no as such a universal definition that clearly dictates what domestic work means, domestic work can be defined as ‘any work performed in or for household/s and is largely done by women’.³ Today’s overall level of development might have been different without the keen role of domestic workers. Domestic work essentially remains feminized and most domestic works are done by women.⁴ The last two decades have witnessed a tremendous rise in the significance of domestic workers.⁵ The Convention Concerning Decent Work for the Domestic Worker⁶ has elucidated that ‘domestic workers’ are an individual person, who engages in domestic work; in an employment relationship or those who perform domestic work infrequently.⁷ This Convention is considered as a turning point in ensuring better working conditions that extends to the respect for human and labour rights of domestic workers.⁸

Despite domestic workers contribution to the national economy, around the world today, they face daunting quagmires and discrimination in a number of countries. The snags that domestic workers smack by are primarily related to exclusion from national labour laws and the absence of alternative governing laws.⁹ In spite of its pervasive nature, domestic work remains neglected and underestimated. The imperceptibility of domestic work is caused by and large by its private nature and the fact that the domestic workers are left outside labour laws of countries-exposing them to horrendous violation of human rights.¹⁰

In order to fully fulfill its international obligations, South Africa has adopted different labour regulations to recognize domestic workers.¹¹ However, it is indisputable that unless the law is put into practice, the mere recognition of domestic workers in the law is not

¹ Schwenken H., Heimeshoff L. M., *Domestic Workers Count: Global Data on an Often Invisible Sector*. Kassel University Press GmbH, Kassel, 2011, 5.

² International Labour Office. *Domestic workers across the world: Global and regional statistics and the extent of legal protection*. Geneva: International Labour Office, 2013, 16.

³ ILO, *Effective Protection for Domestic Workers: A Guide Designing Labour Laws*, International Labour Office, Conditions of Work and Employment Programme, Industrial and Employment Relations Department, Geneva, 2012, 11.

⁴ Albin E. Mantouvalou V., *The ILO Convention on Domestic Workers: From the Shadows to the Light*, in *Industrial Law Journal*, Vol. 41(1), 2011, 2.

⁵ International Trade Union Confederation'Decent Work, *Decent Life for Domestic Workers*, ITUC Action Guide, 2010, 17.

⁶ It is the 189th ILO convention and was adopted during the 100th session of the International Labour Organization. It entered into force on 5 September 2013.

⁷ Schwenken H., Heimeshoff L., nt. (1), 5.

⁸ Carls K., *Decent Work for Domestic Workers: The State of Labour Rights, Social Protection and Trade Union Initiatives in Europe*, ACTRAV/ITC-ILO, 2012, 6.

⁹ Human Rights Watch, *The Domestic Workers Convention: Turning New Global Labour Standards in to Change on the Ground*, 2011, 3.

¹⁰ International Labour Office, *ILO Resources on domestic Work, Catalogue*, ILO Publication Office, Geneva, Available at www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/.../wcms_248947.pdf, 2016.

¹¹ Odeku K. O., *An Overview of Domestic Work Phenomenon*, in *Mediterranean Journal of Social Sciences*, Vol. 5(9), 2014, 698.

sufficient to protect their rights. Contrary to South Africa, Ethiopia has not enacted appropriate laws to protect domestic workers, so they are largely unprotected. Other than the outdated Civil Code of the Ethiopian Empire, no laws that meet the ILO minimum standards have been formulated to recognize domestic workers.¹² The current study attempts to determine whether relevant legal frameworks and institutions exist for domestic workers under the jurisdiction of Ethiopia¹³ and South Africa¹⁴ What's more, it highlights mechanisms to ensure domestic workers' protection when the government fails to enact feasible laws to protect them, and to evaluate the actual execution of existing laws in relation to ILO conventions.

To achieve this objective, we have relied on a doctrinal legal research methodology. It is predominantly concerned with doing exhaustive analysis of the existing statutory proviso and applying relevant legal principles and it also involves ordering those legal principles and proposition in logical and orderly manner. Further it is concerned with critical examination of case law and a piece of legislation to divulge ideals contained in the law is pivotal to topic under study.¹⁵

2. Domestic work and domestic workers and ILO labour standards.

The ILO is said to be the first UN agency to discuss labour inquiries. Since its establishment as a UN agency, the ILO has formulated various conventions and recommendations. Some of the conventions enacted by it include: Weekly Rest (Industry) Convention, 1921 (No. 14); Forced Labour Convention, 1930 (No. 29); Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87); Right to Organize and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Abolition of Forced Labour Convention, 1957 (No. 105

¹² *Fed. Neg. Gaz.*, Year 19, No.25, 1960.

¹³ One can easily comprehend what a domestic worker is as it is teeming in the body of literature. Here, although we rely heavily on the descriptions in the literature, our definition of the concept of domestic workers is concise and is limited to the live-in domestic workers. Although our focus is on domestic workers who live with employers as family members as defined by the Ethiopian Civil Code, in reality, the concept of domestic workers is broader than this. The reason why we rely on the definition of the Civil Code (we think this is a valid definition of our academic activities) is based on two basic principles. First, after the promulgation of the Ethiopian Civil Code, there is no other written law that defines what constitutes domestic work. Second, from our own personal observation the overwhelming majority of domestic workers in Ethiopia are the live-in domestic workers in nature.

¹⁴ Regarding the theory of domestic labour, this article uses Marxist theory, which we believe is the best theory for analyzing the treatment of domestic workers in Ethiopia and South Africa. Despite the existence of dominant theories about domestic labour or workers that includes women's liberationist, feminist, and Marxist feminist, this paper will be foregrounding its analysis based on Marxist theory. The Marxist assumption treats capitalism as a dynamic system based purely on the interaction between the managers who own the means of production and the working class (i.e., labourers). This relationship is fundamentally an opposing and exploitative type. The Marxist theory of class exploitation in capitalism is similar to the relationship between employers and domestic workers. The similarity here is that those who own the means of production (employers) are always in a higher position, which in turn helps them keep domestic workers in the second tier. Exploitation puts domestic workers in an inferior position, which leads to the commodification of labour. This exploitation seems to be premised on free will contracts.

¹⁵ Gawas V. M., *Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development*, in *International Journal of Law*, Vol. 3(5) September 2017, 129.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Occupational Safety and Health Convention, 1981 (No. 155); Termination of Employment Convention, 1982 (No. 158); The Worst Forms of Child Convention, 1999 (No. 182)¹⁶ and the like. Recently, in 1998, the ILO adopted the Declaration of “Fundamental Principles and Rights at Work” proving that it is a champion of domestic workers.¹⁷ The Declaration includes four core rights: freedom of association and collective bargaining rights, the elimination of forced or compulsory labour, the abolition of child labour, and the elimination of discrimination in employment.¹⁸ Though this declaration is non-binding, every member of the ILO has an obligation to protect and respect these core labour standards contained in it.¹⁹ 2011 was a turning point for domestic workers, because it was the time when the ILO passed the Domestic Workers Convention (officially named Convention No. 189) and its Annex Recommendation No. 201.²⁰

The Convention is important because it promotes the respect and realization of the rights of domestic workers in the workplace.²¹ This is the first convention to address the situation of long-term oppressed domestic workers; it also recognizes domestic work.²² The Convention sets minimum standards globally, although it allows states to set standards that are more flexible and beneficial to domestic workers than envisaged in the Convention.²³ This favourable protection may be related to giving them better protection than the ILO standards, or giving them equal or better treatment than other workers.²⁴ Consent is the basis of the contract. Domestic workers and employers should negotiate and determine their employment terms on an equal basis. If written form is required by law, this form should be followed.²⁵ These terms include: the name and address of the employer and worker, the place of work, the start and duration of the contract, the salary, the type of work, the time of work and rest, the right to paid leave, and the termination of the contract.²⁶ These standards are essential to ensure decent work for domestic workers, and each member state should fully comply with these standards.

As well, the Convention addresses about freedom of association and recognition of the right to collective bargaining, elimination of all forms of forced labour, elimination of discrimination with respect to employment and occupation, abolition of child labour.²⁷ The

¹⁶ Ethiopia is a signatory to all of the above conventions; although detailed discussion of them is not important because they were not issued to protect domestic workers alone.

¹⁷ Mantouvalou V., *Are Labour Rights Human Rights?*, in *European Labour Law Journal*, Vol. 3(2), 2012, 8.

¹⁸ *Ibid.*

¹⁹ This declaration is binding because, as sketched out in Article 2, its binding nature stems from becoming a member of the ILO, which is equivalent to implicit or tacit acceptance of the declaration.

²⁰ ILO, *Social protection for domestic workers: Key policy trends and statistics*, *Social protection Policy Papers*, 2016, 6.

²¹ ILO, *Effective protection for Domestic Workers: A Guide to Designing Labour Laws*, International Labour Office, Conditions of Work and Employment Programme, Industrial and Employment Relations Department—Geneva: ILO, 2012, ix.

²² Mulugeta Gebre K., *Vulnerability, Legal Protection and Work Conditions of Domestic Workers in Addis Ababa*, 2012, 12.

²³ See art. 14 of ILO Convention No. 189 and Recommendation No. 201.

²⁴ *Ibid.*, read also its art. 6.

²⁵ *Ibid.*: read art. 7&9 (1) jointly.

²⁶ See entire art. 7 of the Convention No. 189, nt. (23).

²⁷ *Ibid.*, art. 3 (2/a, b, c, d).

Convention also deals with freedom of association and recognition, the right to collective bargaining, the elimination of all forms of forced labour, the elimination of discrimination in employment, the abolition of child labour and occupation setting minimum age consistent with minimum age convention 1973 (No. 138).²⁸

Third, the Convention requires each member state to take relevant measures to ensure a safe and healthy working environment for domestic workers. When measures need to be taken to ensure occupational safety, the unique characteristics of domestic work and national laws should be considered.²⁹ It also envisages minimum wage³⁰ that they should receive monthly unless agreed otherwise by the law or collective agreement.³¹ Finally, it underscores the importance of states consultation with the representative organizations of the employers' as well as domestic workers' if such organization exists---- this consultation could done as per the dictates of the laws and/or collective agreements; taking related measure is possible, if it does not violate national practices.³² Therefore, the Convention urges countries to extend protection to the domestic workers to ensure social justice.

Of the two states, South Africa has ratified the ILO Convention No.189³³ Ethiopia has not yet approved it.³⁴ Despite its sectoral nature, this convention's treatment of domestic workers is more of human rights approach. It is inferred from the stipulation in the convention that 'domestic work is work like any other, further it should be treated as work like no other.'³⁵ Ethiopia cannot use as an excuse non-membership to Convention No.189 to circumvent is obligation to protect domestic workers. This is because this convention regards their rights as a collective human right and Ethiopia has signed other various human rights treaties and hence domestic workers' rights are embodied therein.

The Convention on the Elimination of All forms of Discrimination against Women (CEDAW),³⁶ the International Covenant on Civil and Political Rights (ICCPR)³⁷ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).³⁸ Some obligations noted under these conventions are: prohibition of discrimination;³⁹ and protecting minorities including domestic workers⁴⁰ and ensuring equality.⁴¹

²⁸ *Ibid.*, art. 3 (3) & 491).

²⁹ *Id.*, art. 13(1)

³⁰ *Ibid.*, art. 11

³¹ *Ibid.*, art. 12(1).

³² *Id.*, art. 18

³³ ILO, nt. (16), 8.

³⁴ Ethiopia's non-signatory status does not mean that it can circumvent its obligations, because there is a way of ensuring accountability.

³⁵ Albin E., Mantouvalou, V., *The ILO Convention on Domestic Workers*, nt. (16), 2011, 1.

³⁶ CEDAW was adopted by The UN General Assembly in 1979, with its No. 20 Recommendation. Its Article 1 calls on member states to work hard to eliminate discrimination against women in the workplace.

³⁷ ICCPR 1966, Adopted by the General Assembly of the United Nations on 19 December entry into force 3 January 1976. *See*, part II, Article 4.

³⁸ ICESCR, 1966. Adopted by resolution 2200A of the UN General Assembly, signed, ratified and took effect on January 3, 1976.

³⁹ CEDAW, nt. (36).

⁴⁰ ICESCR (1966), nt. (38).

⁴¹ ICCPR (1966), nt. (37).

3. Domestic workers under Ethiopian laws.

3.1. Domestic workers under ILO Convention No.189 vis-a- vis Ethiopian Civil Code.

As mentioned earlier, the ILO Convention No. 189 introduces standards that countries must comply when they enact their national laws to protect domestic workers. It provides comprehensive standards.⁴² Some established standards include: consent, equal bargaining power to define terms, freedom of association and collective bargaining rights, elimination of discrimination, working hours, wages and others.⁴³ Therefore, the convention requires countries to incorporate these standards into their national laws.

In the light of these standards, let us examine the 1960 Ethiopian Civil code (herein after Code). The Code was the first legislation that recognized domestic workers. The Code, in Book V under Title of XVI (about the contract for the performance of services) governs the employment conditions of live-in domestic workers.⁴⁴ Book V (Title XVI, Chapter 2, Section 3) focuses on how to regulate the working conditions of the live-in domestic workers. Art-2601 of the Code states that the employer shall take all ‘reasonable’ steps to safeguard, the health and well-being of an employee. It allows the employer to act fairly, as to the living quarters, food, times of work, and rest.⁴⁵ The expression ‘reasonable’ utilized under art-2601 of the Code is nebulous and untenable. It gives the employer the full right to decide what his/her domestic worker can get. The code violates the standards clearly set out in Convention No. 189 because it does not consider the guidelines set by the ILO. It seems a gratuitous contract imposed by one party on the other, because only the employer has the right to take action.

The impression is that the Code provides *de facto* recognition of the employers’ right to determine the fate of their live-in domestic workers which represents an unfair practice with respect to these workers favouring more the employers. This concept supports the Marxist discourse, which describes capitalism as class exploitation. Moreover, according to art-2602(1) of the Code, the employer is obliged to provide medication test if its employee contracted of sickness either through medical attendant at home or takes him/her to the hospital.⁴⁶ However this duty is limited to one month in case the illness occurs after at least one year from the beginning of the employment contract, and to two weeks, where it occurs after at least three months from the beginning of the contract.⁴⁷

The Code stipulates that a meager salary of the employee will be used to compensate for the expenses incurred in treating domestic workers during the period of illness. Article 2603/3 of the Code expounds that the employer can be exempted from liability, if an

⁴² ILO, *Effective Protection for Domestic Workers: A Guide Designing Labour Laws*, International Labour Office, Conditions of Work and Employment Programme, Industrial and Employment Relations Department, Geneva, 2012, 6.

⁴³ Read entire *Convention No. 189*, nt. (23).

⁴⁴ Gebremedhin M., *Procrastination in Recognizing the Rights of Domestic Workers, in Ethiopia. Mizan Law Review*, Vol. 10(1), 2016, 71-72.

⁴⁵ *Ibid.*

⁴⁶ The Civil Code of the Empire of Ethiopia Proclamation No. 165/1960 (5th May 1960) Year 19, No. 2. The Empire Extraordinary Negarit Gazeta (Addis Ababa), see art. 2602.

⁴⁷ *Ibid.*

employee deliberately contracts an illness.⁴⁸ However, reimbursement against the salary for expense incurred is wrong; this is because causes of injuries are either occupational or non-occupational. So, holding domestic workers responsible for any disease is lamentable, as causes of illness may be related to workplace for which the employer is responsible. The expression in the Code has utilized an abusive word to describe live-in domestic workers which is ‘*gered*’ in Amharic loosely translated ‘servant’ in English.⁴⁹

Inspired by the Marxist ideology, the *Dergue* took power by ousting the feudal monarchy in 1974 barred the use of the term ‘*gered*’ in favour of ‘*ye bête serategna*’ which means ‘domestic worker’ in English.⁵⁰ This ban is a manifestation of the government intention to eliminate social classes. But, the abrogation of the term ‘*gered*’ notionally did not bring any substantive change to eradicate plague of the live-in domestic workers as the regime never strived to take legislative measures to correct ills of the past.

Therefore, the Code retained the legal effect under the *Dergue* and the problems of live-in domestic workers continued unabated. They denied of their humanity and their basic human rights, and thus are regarded as a commodity rather than a human being. Normally, the treatment conferred to them under the Code is uncalled for.

3.2. Domestic workers and the Constitution of the Federal Democratic Republic of Ethiopia: Is it compatible to ILO standards?

The Constitution of the Federal Democratic Republic of Ethiopia (hereinafter referred to as the FDRE Constitution) has recognized labour rights. However, this recognition is not unique to domestic workers, because the Constitution is the supreme law universally applicable to all families.⁵¹ The universal human rights framework established by the FDRE Constitution reflects the labour rights of domestic workers.⁵² Therefore, Article 18 (2, 3 & 4) implicitly regulates the labour of domestic workers; although this is not an orthodox description ordained only for them rather it is a comprehensive provision for all the citizens. Its Art-18 affirms that inhumane, degrading treatment, forced servitude, and forced labour are prohibited.⁵³ Forced labour is simply ‘any work or service that is exacted from any person by coercion or menace of penalty and for which the person does not avail himself willingly.’⁵⁴ The idiom of the Constitution above on forced labour should be broadly construed to

⁴⁸ *Ibid.*

⁴⁹ Gebremedhin M., nt. (44), 41.

⁵⁰ *Ibid.*, 41

⁵¹ Sommer M. M., Wexels-Riser N., National Labour Law Profile: Federal Democratic Republic of Ethiopia, ILO, Geneva, 2003, available at: https://www.ilo.org/ifpdial/information-resources/national-labour-law_profiles/WCMS_158894/lang-en/index.htm.

⁵² *Ibid.*

⁵³ FDRE Constitution Proclamation No.1/1995 (21 August 1995) Year 1, No. 1 *Federal Negarit Gazeta* (Addis Ababa).

⁵⁴ Art. 2(1) of the C29 Forced Labour Convention, 1930 Convention concerning Forced or Compulsory Labour.

include minors who is incapable under the law to enter into contracts, as it is explicitly declared in the Convention No.189.⁵⁵

The UN Convention on the Rights of the Child (hereinafter CRC) also prohibits any activities that hinder their education, health and development, leading to their exploitation.⁵⁶ The Convention asserts that any activity performed by an underage person who is immature to be employed or even when the work is performed by an individual who attained the age of majority yet the work appears perilous to their lives considered as labour exploitation.⁵⁷ Beware that Ethiopia has joined the CRC.⁵⁸ So, the rider of the constitution seems very germane to domestic workers in extending them legal protection, though it is not enough unless specific regulation targeting them is enacted to regulate unbridled abuse and forced labour they face. In line of this, it is plain that no one shall be forced perform any activities without consent, and anyone who forced others' to engage in activity that violates the constitution shall be punished.

Article 25 of the Constitution contends that everyone has the right to equal legal protection, free from discrimination based on race, colour, nationality, or any other social status.⁵⁹ Notwithstanding, all these, being a citizen is sufficient to guarantee equal right to anyone. This invariably shows that the constitution is an indispensable inclusive law; as it proffers anyone including the live-in domestic workers to have decent life. Article 40 of the same avers that the right to ownership of property is accorded to every Ethiopian citizen. Obviously, everyone who is legal citizen to the country is permitted to have property.⁶⁰ Other germane provisions to defend the rights of the live-in domestic workers are: the right to security of person⁶¹ and working hours which is legally authorized, the right to rest, the right to occasional paid leave, day off and holiday remuneration and the right to healthy working environment.⁶² Such well-established provisos signify that it is a foundation for labour law and imposes on obligations on the state institutions__ legislative, executive and judiciary to fulfill, respect and protect the rights of domestic workers.

3.3. Labour Act No. 1156/2019 of Ethiopia: does it overhaul the exclusion of domestic workers?

The Labour Proclamation No. 377/2003⁶³ was hailed as landmark legislation for the protection of the rights of workers. Since then, workers engaged in various jobs in private and government enterprises enjoyed the legal protection of their labour rights.⁶⁴ However,

⁵⁵ See art. 3-4 of the ILO Convention No. 189, nt. (23).

⁵⁶ See art. 3 of the 1989 United Nations Convention on the Rights of the Child.

⁵⁷ See art. 5 of the Convention No.189, nt. (23).

⁵⁸ Ethiopia ratified CRC on May 14, 1991.

⁵⁹ FDRE Constitution, nt. (53).

⁶⁰ Habib A. A, *The Jurisprudence of the Council of Constitutional Inquiry and of the House of Federation on Property Related Claims: Critical Study*, 2018, 1.

⁶¹ Art. 16 of FDRE Constitution, nt. (53).

⁶² *Id.*, 42(2).

⁶³ Ethiopian Labour Proclamation No.377/2003, Federal Negarit Gazeta,10th Year, No.12.26, February, 2004

⁶⁴ Gebremedhin, nt. (44), 40.

the Proclamation excluded certain segments of society; including the domestic workers who are barred from its realm of protection. It is mentioned that this enactment shall not be applied for the contract of upbringing, treatment, care or rehabilitation, contract for training and educating other than apprentice, managerial employee responsible to set and execute management policies by the law or delegation and finally authorizes the Council of Minister to enact regulation on conditions of work applicable to personal services.⁶⁵

The International Labour conference asserts 'correcting decent work arrears in the domestic work sector needs adopting legislative measure by the government which is essential to transform this informal sector to formal economy.'⁶⁶ However, Ethiopia retreated its obligations because it excludes this sector from getting legal coverage indefinitely. Some empirical studies have shown that in Ethiopia, due to the lack of governing laws, many young people who started working as domestic workers when they were minors face tremendous exploitation and abuse.⁶⁷ 90% of them migrated from rural to urban areas; half of them had no formal education, and often subservient to their employers' unquestionable will.⁶⁸

When the Ethiopian legislature repealed the Labour Proclamation No.377/2003 and replaced it with the new Labour Proclamation No.1156/2019⁶⁹ no change was made. Article 3 of the new proclamation hinted that this new proclamation does not apply to: support, treatment, care and rehabilitation contracts (Article 3, paragraph 2 (a), and personal service contracts (Article 3, paragraph 2) (d). This Proclamation, like its predecessor, provides that the Council of Ministers shall issue regulation governing conditions of work applicable to personal services' (Art-3(3) (c)).⁷⁰ Despite the adoption of a new labour Proclamation, yet the new regulation does not include those regulations stipulated in the provisions of its predecessor.

This legislative exclusion conceivably ennobles the exploitation of the live-in domestic workers, as well as impels them toward the slavery-like situation. The absence of law utterly impedes the formation of contract— both procedurally and substantively. In Ethiopia, nevertheless, prompted by wage-earning to sustain their lives, the live-in domestic workers often enter into an unwarranted contract. In this situation, when a breach of contract occurs, sadly, there is no resort to claim their rights. The relationship between the parties is still governed by the provisions of the 1960 Code, which grossly violates the ILO Convention and other treaties as proclaimed earlier. Accordingly, working hours, severance payments, reinstatement, right to leave, working conditions including occupational safety measures, occupational injuries and disease, trade unions, and collective agreement and termination of contract are all remains unreachable nowadays.

Thus far Ethiopia has not enacted regulation to govern this sector. This implies that it has violated the Constitution; the ILO Convention No. 189 and Recommendation No. 201, adopted in 2011 and other human rights instruments. Particularly, the ILO Convention

⁶⁵ See art. 3, 2(a, b, c) of the Ethiopian Labour proclamation.No.377/2003 nt. (61).

⁶⁶ ILO, *Effective Protection for Domestic Workers*, supra note 3, 2012, 2.

⁶⁷ Mulugeta Gebre K., nt. (22), 18.

⁶⁸ The Population Council, Inc., 2018, *Migration and child Domestic work: Evidence from Ethiopia*, Brief, 1-2.

⁶⁹ Ethiopian Labour Proclamation No.1156/2019, *Federal Negarit Gazeta*, 25thYear, No.89, September 2019.

⁷⁰ *Ibid*.

urged state party to take necessary measures to ensure that domestic workers enjoy decent employment conditions.⁷¹ Therefore, it seems Ethiopian state ignores their plight by refusing to obey ILO guidelines that is discriminatory practice against them. This cause conflated with place of their work: private home of their employer enhances their vulnerability. The legislative gaps considerably contribute to the precariousness of the live-in domestic workers in Ethiopia.

4. The need for campaigning and unionization: a better approach to promote the working conditions of domestic workers in Ethiopia.

The right to work is critical for human continued existence and is considerably connected to other human rights like the right to life, adequate standard of living, the right to health and freedom of associations.⁷² As aforementioned, although Ethiopia has refused to recognize domestic workers by adopting specific law to address the predicaments of the domestic workers, there are mechanisms to improve their precarious working conditions. These mechanisms are by campaigning for their rights and organizing them into unions to enable them to defend themselves. There are various legal grounds to do so. Pertaining to this, there are some ILO Conventions that Ethiopia has signed⁷³ and the constitutional terms identified prior are legal justifications to enforce protection of domestic workers.⁷⁴

To improve the overall working conditions of workers, intensive campaigning and organizing them through the active participation of humanitarian organizations, civil societies, and even government institutions is vital. This move will make their voices be heard and press the government to respond to their plight. Campaigning for them by any concerned stakeholders now deems feasible than ever in Ethiopia. This is now possible because the government has taken certain measures, such as repealing laws that prohibit humanitarian organizations from defending these organizations. The House of Peoples' Representatives has rescinded the Charities and Societies Proclamation No.621/2009 that has seriously stifled and curtailed the operation of humanitarian organizations from campaigning and defending the rights of the live-in domestic workers and others.⁷⁵

Concerted campaigning for the live-in domestic workers could achieve its goal of forcing government to change course of its action which now belie its obligations. It then induces the government to recognize domestic workers through enacting laws or establishing institutions which thereby lead to the protection of their rights. Experience from other countries also shows the role of campaigning in upholding their rights and ensuring justice for all. The United States is the country with the best practice where legislative gaps that

⁷¹ See ILO Convention No. 189, nt. (23); especially commencing from art. 3.

⁷² Vienna Declaration and Programme of Action, 1993. Adopted by the World Conference on Human Rights in Vienna on 25 June, see art. 63.

⁷³ Desset A., *Trade Union Rights of Government Employees in Ethiopia: Long Overdue!*, in *Ethiopian journal of Human Rights*, Vol. 1, 2013, 118.

⁷⁴ FDRE Constitution, nt. (53).

⁷⁵ World Organization Against Torture, *Ethiopia: A New Era For Human Rights Organizations?* 2019. Available at <http://www.omct.org/human-rights-defenders/statements/ethiopia/2019/02/d25235/>.

rendered domestic workers vulnerable were overcome by Domestic Workers United (DWU).⁷⁶ This group has made unyielding effort to end an oppressive practice that repressed them after the end of slavery.⁷⁷ It has played a significant role in organizing rallies in support of domestic workers so that their abuse draw attention and got recognition: In 1990 DWU won the passing of resonant law that many hoped would lead to the establishment of labour rights for domestic workers.⁷⁸

In Ethiopia, a paradigm shift is essential to realize constitutionally assured ambitions of the live-in domestic workers. These aspirations are the struggle for justice and recognition. Their already fragile position that resulted from the isolated nature of their place of work has been further worsened by their complete exclusion from Ethiopian labour law. The shift needed is, instead of sitting idle and expecting the government to improve their working conditions, the concerned stakeholders should push for changes through campaigning. Hopefully, if there will be intensive rallying in the future for the live-in domestic workers' rights in Ethiopia, it will lead not only to the enactment of legislation to govern them, but also lead to the establishment of the domestic workers union. If campaigning succeeds in forming domestic workers union, then the union will take the lead in the struggle to ensure minimum standards for them which could also strengthens their collective bargaining power.

5. Domestic workers treatment under the South African laws.

5.1. The South African Constitution.

The Constitution⁷⁹ guarantees equality before the law without any distinction.⁸⁰ Its Section 23 recognizes an equal right to fair labour practices for all. Moreover, the right to uniform treatment and not to be unfairly discriminated prescribed in its section 9.⁸¹ In post-apartheid South Africa, the adoption of the new Constitution was hailed as a massive overhaul that has transformed servants into workers. Long before the adoption of the ILO Convention on Decent Work for Domestic Workers, the Constitution recognized domestic workers because its provisions included fair labour practices.⁸² The Constitution under its section 10 recognizes human dignity, the notion which has a basic attachment to human equality.⁸³

⁷⁶ Hobden, C., *Winning Fair Labour Standards for Domestic Workers: Lessons Learned from the Campaign for a Domestic Worker Bill of Rights in New York State*, ILO, Geneva, *Global Union Research Network Discussion series papers*, 2010, 1.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Constitution of Republic of South Africa, (1996) (Act No.108).

⁸⁰ Wessels, T. S., *The Development Impact of the Domestic Workers Skills Development Project on Its Participants*, 2006, 1.

⁸¹ *Ibid.*

⁸² Remember, the ILO Convention, No. 189 was adopted in 2011. South Africa ratified the convention on June 20, 2013, but the South African Constitution recognized domestic workers in the Constitution in 1996.

⁸³ Tanzer Z., *Domestic Workers and Socio-economic Rights. A South African Case Study. The Transformation of Work. Challenges and Strategies*, 2013, 3.

5.2. The subsidiary legislations.

Following the introduction of fair labor practices in the Constitution, various specific legislations were introduced to actually address it. For example, the Employment Equity Act (hereinafter EEA) of 1998 was enacted with the aim of protecting domestic workers against discrimination and guaranteeing equality.⁸⁴ Compelled by the deeply embedded and ubiquitous nature of the domestic work, the government has made a reform to improve the well-being of domestic workers. Moreover, several legislative acts legislations like the Labour Relation Act 66 of 1995 (LRA) and Basic Conditions of Employment Act of 75 1997(BCEA) were promulgated. The LRA aims to prohibit unfair treatment and irrational discrimination that debunks domestic workers to unjustifiable rights violations.⁸⁵ The BCEA enacted to regulate the required minimum standards under which domestic workers can do their jobs.⁸⁶ Yet, the BCEA never touches on issues like minimum wage; thus, domestic workers were locked in exploitative employment relations; until the formulation of sectoral determination.⁸⁷

5.3. The minimum working conditions, working hours and the right to leave under the South African Law.

For the first time, the South African Department of Labour has created a minimum wage standard in various sectors including domestic work. Sectoral Determination Number 7 exclusively aims to manage the employment relationship between domestic workers and their employers.⁸⁸ It explains the employer's responsibility;⁸⁹ if the employer terminates the employment contract before it expires, the domestic worker can retain the right to stay in his/her accommodation for a minimum period of one month. Furthermore, it prescribes minimum wages stipulations that employers are required to consider while making payment to their domestic workers.⁹⁰ The BCEA is a major legislative victory for South African domestic workers because it provides them with minimum employment standards, including regulations on working hours, contract termination and paid leave.⁹¹ Article 9(a) of the BCEA stipulates that employers shall not require their domestic workers to work more than 45 hours per week.⁹² Regarding the right to leave, Chapter 3 of the BCEA states that employees

⁸⁴ *Ibid.*

⁸⁵ Marais C., *Lived Realities of Domestic Workers within the South African Labour Legislative Context: A Qualitative Study* (Doctoral dissertation, North West University), 2014, 5.

⁸⁶ Budlender D., *The Introduction of Minimum Wage for Domestic Worker in South Africa, Conditions of Work and Employment Series No.72*, International Labour Office, Geneva, 2016, 3.

⁸⁷ *Ibid.*, 5.

⁸⁸ See entire Chapter 8 of the Republic of South Africa (RSA), 1997. Basic Conditions of Employment Act 75 of 1997.

⁸⁹ *Id.*; read chapters 2, 3 and 4 altogether to know more about the responsibility of an employer.

⁹⁰ Gobind J., du Plessis G. A., Ukpere W. I., *Minimum Wage and Domestic Workers Right Basic Conditions and Employment: Are Employers Complying?*, in *African Journal of Business Management*, Vo. 6(47), 2012, 11686.

⁹¹ Sjöberg E., *Enforcement of Laws Regulating Domestic Work - A Case Study of South Africa*, Faculty of Law, Lund University, 2011, 22.

⁹² Basic Conditions of Employment Act 75 of 1997, nt. (88).

are entitled to comprise: annual leave, sick leave, maternity leave, and family responsibility leave.⁹³ Recognition was also given to domestic workers' right to leave due to unexpected circumstances that may hamper their health.⁹⁴ Finally, the Sectoral determination 7 also elucidates that domestic workers have the right to annual leave, without reduction in their wages.⁹⁵

5.4. The competing laws, the invisibility of the domestic work and weak inspection: dilemmas to domestic workers' rights protection in South Africa

There is no wonder that South Africa has strived to ensure equality for all through its legislative enactments.⁹⁶ However, the question is whether the law has brought substantive changes to the lives of domestic workers, regardless of their status or origin? Domestic workers in South Africa seem to be affected by juxtaposed but competing narratives in the law. In the purview of this, the dilemmas facing the domestic workers in South Africa today are four-folds.

The first challenge results from contradiction between the Constitution and Immigration Act in which the former acknowledged the fair labour rights of domestic workers as legal employment⁹⁷ while the latter unprecedented barring of migrant domestic workers as 'illegal' based on legal status or origin.⁹⁸ The South African Constitution and LRA seem inclusive of 'illegal' migrant domestic workers because fair labour rights enunciated in the Constitution is all-encompassing, and the later, prohibits unjust discrimination against anyone. In order to enforce the provisions of the LRA, a labour court was established. It is entrusted to entertain cases involving unlawful dismissal of domestic workers.⁹⁹ Ironically, the South African Immigration Act has arguably precluded transnational migrant domestic workers from neighbouring countries considering them as "illegal" alien and decry their entry in to the country as unlawful or if entered they face tremendous challenges.¹⁰⁰

The second concern that infringes the labour rights of domestic workers is the negative repercussions of the law enacted to protect the domestic workers.¹⁰¹ Employers have portrayed certain regulations as unnecessary burdens, which interfere with their lives and severely distort the relationship between employers and domestic workers. The isolated nature of their work coupled with the resistance to the laws further complicates the living

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Sjöberg E., nt. (91), 23.

⁹⁶ Ally S., *From Servants to Workers: South African Domestic Workers and the Democratic State*, University of KwaZulu-Natal Press, Scottsville, 2010, 8.

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Jacobs N., Manicom D., Durrheim K., *Help Somebody Who Helps You: The Effect of the Domestic Labour Relationship on South African Domestic Workers' Ability to Exercise their Rights*, in *Alternation*, Vol. 20(1), 2013, 277.

conditions of domestic workers as their providence is wholly depends on the whimsies of their employers that also debilitated the state's monitoring efforts.¹⁰²

The third impediment that encumbers the enforcement of the labour rights of domestic workers arises from the apertures in the law made to govern them. For instance, Sectoral Determination 7 recognizes “payment in kind” when and where it deems pertinent and or expressly agreed in the employment contract. The law does not have any provisions on payment in kind, and it is difficult to measure the component of wages at the time of payment.¹⁰³ These intertwined factors lead to dependence and continued exploitation of domestic workers. This suggests the government's intention to turn servants into domestic workers has remained unachievable.

The last challenge that subjugates domestic workers to the whimsies of their employers is the weak inspection. Domestic workers in South Africa, including indigenous people, have always faced obstacles that prevent them from enjoying their rights.¹⁰⁴ The impediments result from the failure in labour inspections on the part of the government.¹⁰⁵ Labour inspector is authorized to supervise overall working conditions and workplaces, provide legal advice to employees and employers on their respective rights and responsibilities, and accept employee complaints.¹⁰⁶ The justification behind making the follow-up is to ensure the compliance of the employers with the relevant legal provisions. In the case of non-compliance, the inspector should first notify the employer with a written order requiring the employer to comply with the laws.¹⁰⁷ If it is still rejected by the employer, the inspector can submit an order to the labour court.¹⁰⁸

In addition to the inspection scheme, the LRA also established another system for investigating labour disputes, called the Commission for Conciliation, Mediation and Arbitration (CCMA). Since its establishment, it has become a well-known institution entrusted to carry out mediation and reconciliation in accordance with the law.¹⁰⁹ Its jurisdiction is national, and it has the power to accept disputes related to improper dismissal, discrimination and disagreements over severance pay for domestic workers.¹¹⁰ The Labour Court is also another institution for adjudicating labour disputes stipulated by the LRA, mainly arbitrating labour disputes when mediation and reconciliation do not work.¹¹¹

Despite the establishment of labour inspection mechanisms and labour court, the government actually cannot fully ensure the respect of domestic workers. First, with regard to the labour court, domestic workers are unable to get services due to high costs. Second, it is unlikely for domestic workers to pursue legal claims against their employers so long as they

¹⁰² *Ibid.*

¹⁰³ Magwaza T., *Effects of Domestic Workers Act in South Africa: A Steep Road to Recognition. Agenda: Empowering Women for Gender Equity*, 2008, 22, 78, 83.

¹⁰⁴ Sjöberg E., nt. (91), 30.

¹⁰⁵ *Ibid.*

¹⁰⁶ See RSA, 1997, Basic Conditions of Employment Act 75 of 1997, nt. (88).

¹⁰⁷ Sjöberg E., nt. (91), 30.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ Basson A., Mischke C., Christianson M., Strydom E. M. L., *Essential Labour Law*, 4TH, Combined Edition Butterworths, Cape town, 2005, 23.

¹¹¹ *Ibid.*

are still working for the same employer. As their employers' home is the place of their work, they do not have the courage of taking their matter to court.¹¹² In addition, domestic workers may be discouraged due to fear of retaliation by employers. Therefore, they do not want to discuss this issue with the inspector because if they speak, they may lose their jobs.¹¹³

6. Conclusions.

This paper has analyzed domestic workers' treatment in Ethiopia and South Africa. The main purpose of the paper is to examine whether the two countries have fulfilled their obligations under the ILO Convention and their respective national laws and other legal instruments in terms of enacting appropriate laws and putting them into practice. In line with the above two factors; South Africa, as a signatory of the ILO's Decent Work Convention and other instruments, has enacted several laws to protect domestic workers.

However, according to the analysis, no matter how much effort is put into legislation, the protection of domestic workers is actually negligible. Regarding Ethiopia, although it has not yet signed the ILO's Decent Work Convention, it has successively signed various ILO conventions and other international instruments. Besides these conventions, a labour right is recognized in the FDRE Constitution. Regrettably, however, Ethiopia failed to provide protection to domestic workers through the promulgation of applicable laws. Domestic workers are not within the scope of applicable labour laws, and no alternative laws have been enacted to protect them. Unlike South Africa, Ethiopia has never adopted any legislative measures to protect domestic workers. This seems to be deliberate discrimination, prolonging their suffering.

Hence, neither country has fulfilled its commitments under ILO Conventions and their national laws. Although South Africa has made some progress in enacting laws, Ethiopia seems to have wittingly evaded its obligations because it has not enacted laws that regulate domestic workers. Thus, this paper finally concludes that the South African government should deliver practically what it has promised in its enactments. If it is serious enough to respect the standards of the ILO, Ethiopia should treat domestic workers in the same way by establishing an appropriate legal system that best protects them. If the government still does not respond, other stakeholders should campaign and urge the government to act.

¹¹² Du Toit D., Huysamen E., *Implementing Domestic Workers' Labour Rights in A Framework of Transformative Constitutionalism*, in Du Toit D. (ed.), *Exploited, Undervalued - and Essential: Domestic Workers and the Realisation of Their Rights*, Pretoria University Law Press, Pretoria, 2013, 70.

¹¹³ See Sjöberg E, nt. (91), 35.

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