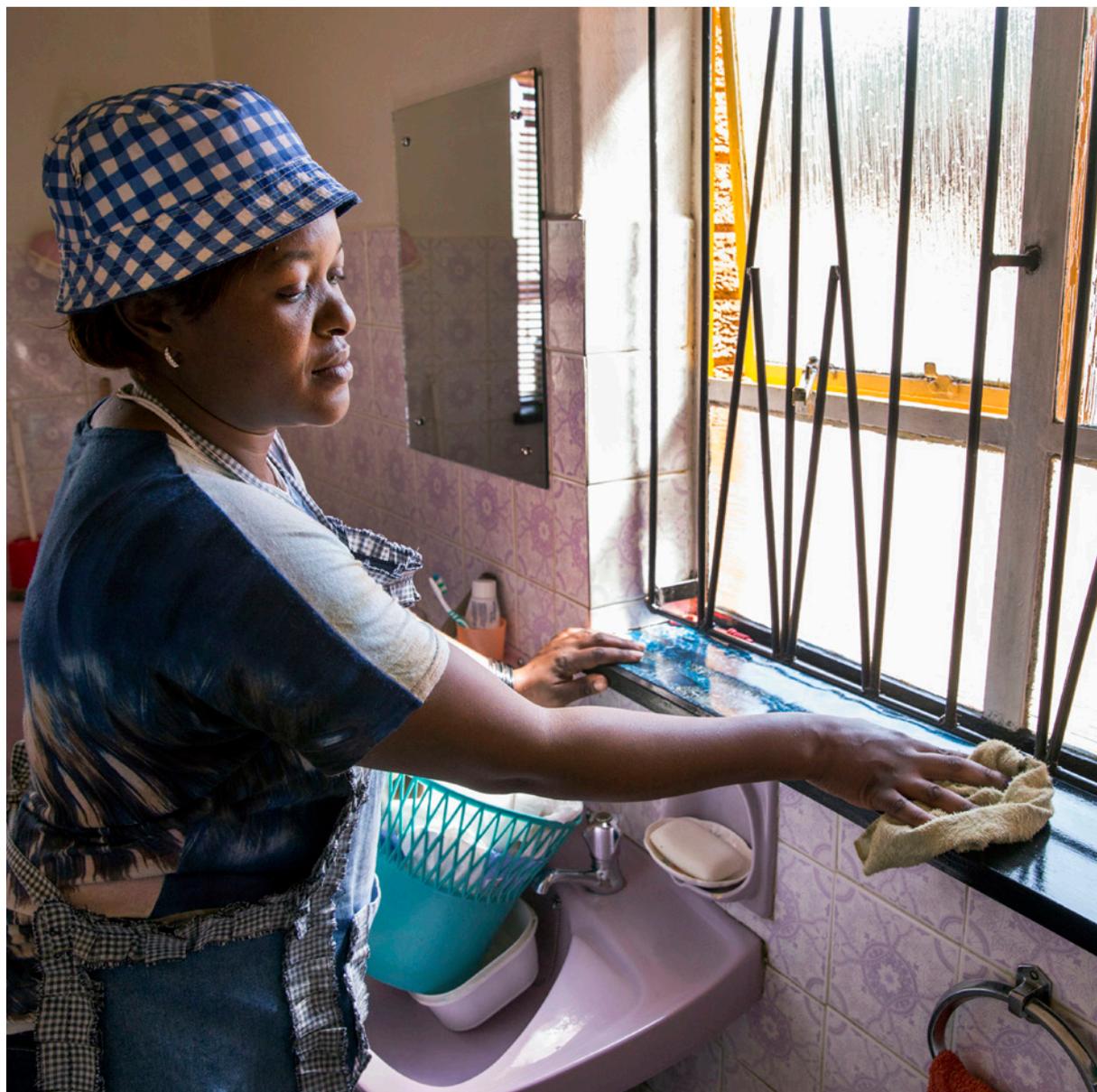




Women in Informal Employment Globalizing and Organizing

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Promoting Decent Work for Domestic Workers: Lessons From Five Countries

Pamhidzai H. Bamu-Chipunza

WIEGO Resource Documents

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List of Acronyms

CWAO	Casual Workers' Advice Office
CCMA	Commission for Conciliation, Mediation and Arbitration (South Africa)
COIDA	Compensation for Occupational Injuries and Diseases Act No. 61 (South Africa)
FLOW	Funding Leadership Opportunities for Women
GTUC	Ghana Trade Union Congress
IDRC	International Development Research Council
IDWF	International Domestic Workers' Federation
ILO	International Labour Organization
ISCOD	Trade Union Institute for Cooperation Development
MBO	Membership-based Organization
ORP	Organization and Representation Programme
OHS	Occupational Health and Safety
SADSAWU	South African Domestic Service and Allied Workers' Union
SD 7	Sectoral Determination No. 7 on Domestic Work
SEWA	Self-Employed Women's Association
SLP	Social Law Project
UIF	Unemployment Insurance Fund
WIEGO	Women in Informal Employment: Globalizing and Organizing

Introduction

For centuries, millions of households around the world have depended on the help of domestic workers. Domestic workers perform various duties, including cooking, cleaning, washing and care-giving. Despite its significance in terms of size and its role in enabling women to participate in other economic activities, domestic work remains one of the most undervalued and unregulated sectors in both developing and developed countries.

A notable achievement in this sector is the adoption of ILO Convention No. 189 (C 189) and Recommendation No. 201 (R 201) concerning decent work for domestic workers in 2011. These instruments seek to promote the regulation of domestic work and protection of domestic workers. They cover matters such as working time, leave, social security and migrant status. These developments have provided an impetus for Member States and social partners to promote decent work in this sector.

Between 2007 and 2014, Women in Informal Employment: Globalizing and Organizing (WIEGO) carried out the “Law Project,” which aimed to contribute to the development of enabling legal and regulatory environments for informal workers, especially women. The Law Project focused on domestic workers, homeworkers, street vendors and waste pickers in five countries: Ghana, India, Peru, South Africa and Thailand.¹ The Law Project’s specific objectives were as follows:

- To document and analyze laws, regulations and policies that impinge on the work, working conditions and livelihoods of workers representing the four occupational groups of focus;
- To identify useful laws, regulations and judgments (“better practices”), and key legal strategies and struggles of these informal workers that can be widely shared;
- To create a platform of demands and model clauses, laws and agreements that are useful for informal worker organizations in their engagement with authorities or employers;
- To help build the capacity of informal worker organizations, and especially women leaders, to understand and engage with legal issues, through advocacy, negotiation and implementation of favourable legal change;
- To contribute to conceptual change concerning notions of “work,” “worker” and “work organization.”

Ultimately the project aimed to transform research results into policy lessons and policy influence through a) building the capacity of membership-based organizations (MBOs) of informal workers in policy analysis and advocacy; b) creating and leveraging policy space for the MBOs to engage with policymakers; and c) using findings, lessons, and demands from the project towards advocacy efforts in global policy spaces. The project activities² included consultations with workers and stakeholders, sensitization and capacity-building workshops with workers and employers, awareness-raising campaigns, research, advocacy and lobbying.

¹ The partners in each of the project countries were Ghana Trade Union Congress (GTUC) in Ghana, Self-Employed Women’s Association (SEWA) in India, the Trade Union Institute for Cooperation Development (ISCOD) in Peru, the Social Law Project (SLP) in South Africa and HomeNet Thailand in Thailand.

² See more on the law project: http://www.wiego.org/informal_economy_law/country-reports

The Law Project team documented and analyzed the laws/regulations and policies that undermine decent work and working conditions of domestic workers. All five country teams produced research reports, reviewed the laws and literature and documented consultations with domestic workers. These reports identified the legal and policy gaps and generated recommendations for reforms to promote decent work for domestic workers.

Whether organizations and their leaders have retained, updated and shared the knowledge and skills that they acquired during the training would be influenced by whether there have been opportunities for further training and further opportunities for domestic workers to apply the knowledge acquired through engagement with government and stakeholders. In the absence of a comprehensive post-project assessment, one could cautiously assume that limited resources may hamper the replication of the capacity-building. In addition, trade unions' limited organizational capacity may also limit these possibilities, as has been the case in South Africa. The Social Law Project (SLP) noted that the weakness of the South African unions limited the impact of the Law Project and generally limited efforts to influence law and policy. By contrast, the Peruvian domestic workers' unions have shown initiative by drafting a law that is aligned with C 189, after the conclusion of the Law Project.

The Law Project also contributed towards creating a platform of demands that could inform domestic workers' organizations' engagement with authorities and employers. Each country team conducted training activities with domestic workers and their leaders to enable them to know and use the law, and to influence legal change. Workers in Peru, South Africa and Thailand used the knowledge and skills gained through training in their engagements with government and with other stakeholders.

The Law Project further aimed to contribute to expanding conceptual notions of “work,” “worker” and “work organization.” In the context of the domestic sector, this objective took the form of advocating for the recognition of domestic work as work like any other. This was particularly important in India, where the law does not recognize domestic workers. Laws in the other four countries recognize domestic workers, but do not afford them all the rights that they extend to other workers. Societal attitudes that dismiss domestic workers as “house-helps,” “part of the family,” and survivalists served to reinforce these legal shortcomings, particularly in Ghana, Peru and Thailand. The Law Project teams in these countries reported that the capacity-building and awareness campaigns contributed towards raising domestic workers' profiles and their status as workers with legal entitlements.

The final specific objective was to “transform research results into policy lessons through ... creating and leveraging policy space for the membership-based organizations (MBOs) of informal workers to voice their perspectives and demands to mainstream policy makers; and using findings, lessons, and demands from the project in its own policy advocacy efforts at the international level.” The Law Project enabled MBOs to create and leverage spaces to raise their views and demands, particularly in Peru, Thailand and South Africa. The inactivity of Ghana's National Task Force on Domestic Work hampered workers' engagement with policymakers.

This resource document aims to highlight the experiences of domestic workers in their struggles for decent work within five distinct national regulatory regimes, with the aim of identifying lessons for strategic advocacy in this area. Drawing on research and project reports from the five countries, it identifies the challenges that domestic workers face and the changes they want to see in their working lives. It considers the challenges that frustrate their realization of decent work. These challenges

include socio-economic factors, shortcomings of the law and challenges in the implementation of legislation, among others. This document further analyzes the advocacy strategies that the partners adopted in the five countries, with a view to drawing out lessons learned for domestic worker organizations and their allies. While the Resource focuses on the five project countries, the lessons learned will be useful for workers, lawyers, researchers and activists working with domestic workers in other contexts as well.

The Resource is structured as follows: Part 1.1 below provides a brief overview of the legislation that regulates domestic work in each country. Part 2 provides a thematic discussion of the domestic workers' demands and the challenges giving rise to their demands. Part 3 reflects on the lessons learned in each of the five countries.

1.1 Overview of relevant laws in each country

In Ghana, the Labour Act No. 651 of 2003 regulates domestic work. This Act applies to all workers employed under a contract of employment, whether employed on a permanent, part-time, temporary or casual basis.

In India, central and state laws regulate employment. At the central level, over 40 statutes govern different aspects of work, including working hours, minimum wages and social security. Most of these laws exclude domestic workers from their scope because the definition of the employment relationship and of the workplace excludes work in the private household. A few central statutes – such as the Unorganized Workers Social Security Act, 2008, and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and the Child Labour Act, 1986, Peru – have several laws that govern domestic work. The primary legislation that governs the terms and conditions of employment is the Domestic Workers' Law No. 27986 of 2003 and the accompanying regulations in Presidential Decree No. 015-2003-TR. In addition, various resolutions and decrees regulate issues that relate to domestic work, including registration of workers, social security contributions, discrimination against domestic workers, and the recognition of a day to celebrate domestic work.

In South Africa, legislation that covers the individual employment relationship, collective labour law, basic conditions of employment, occupational health and safety and unemployment insurance, and skills development include domestic workers. Sectoral Determination No. 7 under the Basic Conditions of Employment Act of 1997 that set minimum wages and other conditions of employment, including working hours, also covers domestic workers.

Thailand's Labour Protection Act B. E. 2541 (A.D. 1998) applies to most employees in Thailand, and partially includes domestic workers. Ministerial Regulation No. 14 of 2012 extends the weekly rest, public holidays, sick leave, unused leave and child labour provisions of the Labour Protection Act to domestic workers. It therefore provides partial coverage to domestic workers, as will be discussed in Part 2 below.

2. Workers' Concerns and Legal Challenges Affecting Them

This section canvasses the concerns and the demands that domestic workers raised in the five project countries. While most of these concerns and demands relate to shortcomings of the law, other challenges are included in the discussion so as to fully capture workers' concerns. It begins, in section 2.1, with the concerns that are fundamental to domestic workers' dignity as workers. These relate to domestic workers' legal exclusion and social stigmatization.

Domestic workers demanded that the law recognize them as workers, and that society respect them as workers who make a meaningful contribution to the economy and society. Their key demands included: the provision of employment contracts for domestic workers, the extension of dispute resolution and grievance mechanisms to domestic workers, and sensitization campaigns about decent work for domestic workers.

This discussion is followed (in section 2.2) by a discussion of workers' demands in relation to basic working conditions, such as wages, working time, leave, accommodation and severance pay. Section 2.3 canvasses additional protections for domestic workers, namely protection from discrimination, harassment and abuse; occupational health and safety protection; and social protection. Next, section 2.4 canvasses the protection of vulnerable groups of domestic workers, namely children, migrant workers and part-time workers. Section 2.5 discusses workers' concerns about organizations and collective bargaining. Finally, section 2.6 outlines workers' concerns about employment agencies.

2.1 Recognition, status and respect

2.1.1 Respect and status

Workers in all five countries demanded that their work be respected and that they be recognized as workers that make a valuable socio-economic contribution. A researcher in Peru elaborated that Peruvian society considers domestic work to be menial work, and educational disparities, coupled with racial and ethnic discrimination, render the employment relationship unequal (Balda, 2012). Employers have paternalistic attitudes towards domestic workers and do not recognize domestic workers as workers or consider their homes to be workplaces (Balda, 2012). Some aspects of the Peruvian law perpetuate inequality between domestic workers and other workers. For instance, it provides for an annual bonus of half a domestic workers' monthly salary, while according other workers a bonus of a full month's salary (Balda, 2012).

In Ghana, most of the provisions of the Labour Act apply to domestic workers. However, many employers do not comply with the law. Traditional practices that relate to fostering children from needy families and caring for extended family members hamper the application of the laws (Boateng, et al., 2012). These arrangements involve a child or family member performing domestic work in exchange for food, accommodation and the opportunity of an education (Boateng, et al., 2012). The distinction between such arrangements and the conventional employment relationship is blurred, making it difficult to apply labour law to these workers.

2.1.2 Legal recognition of domestic workers as workers

Domestic workers in all five jurisdictions demanded legal recognition as workers, equal to other workers. As elaborated below, this is of greatest concern in India, where labour laws exclude domestic workers.

In India, the legal definitions of “workman,” “employer,” “establishment,” “factory” and “industry” do not include domestic workers, who are employed in private households, thus excluding them from the scope of various labour laws.³ However, a few central statutes that govern specific issues, such as sexual harassment and social security, expressly include domestic workers. Also some states have established minimum wages for domestic workers.⁴ Domestic workers have therefore called for comprehensive central legislation to govern all aspects of domestic work.

The challenge of legal recognition in Ghana, Peru, Thailand and South Africa is that the law only extends some worker protections to domestic workers. Laws in the different countries exclude workers from protections covering issues such as working time, leave, and social security. These challenges are more fully elaborated under sections 2.2 and 2.3 below.

Workers in Ghana, India, Peru and Thailand further demanded that their governments ratify ILO Convention No. 189 on Decent Work for Domestic Workers. In South Africa – which has ratified the Convention – the focus is on aligning labour laws to the Convention’s provisions.

2.1.3 Formal employment contracts

Domestic workers in India, Peru and Ghana demanded formal employment contracts to enable them to know and understand the terms and conditions of their employment. Without written contracts, domestic workers are vulnerable to unilateral changes such as the unilateral imposition of additional tasks, or reduction of their wages. Workers in India demanded that a model employment contract be developed to guide employers and domestic workers. In India, the absence of contracts is the result of the absence of a legal obligation to provide domestic workers with a written contract. However, in jurisdictions Peru and Ghana, the challenge relates to the poor implementation of and non-compliance with the legal provisions that require employers to provide domestic workers with employment contracts.

2.1.4 The extension of compliance and grievance mechanisms to domestic workers

Domestic workers in India, Peru and Thailand demanded appropriate grievance mechanisms for the sector. They also demanded that the labour inspectorate conduct inspections in their workplaces to enforce compliance with the applicable legislation.

³ These include Minimum Wages Act, 1948; the Maternity Benefit Act, 1961; Workmen’s Compensation Act, 1923; Interstate Migrant Workers’ Act, 1979; Payment of Wages Act, 1936; Equal Remuneration Act, 1976; Employee’s State Insurance Act, 1948; Employees’ Provident Fund Act, 1952; the Payment of Gratuity Act, 1972. See for example section 2 of the Maternity Benefit Act, section 1 of the Employees’ Provident Fund Act, and section 1(3) of the Payment of Gratuity Act.

⁴ In 2007, Tamil Nadu included domestic workers in Manual Workers Regulation of Employment and Conditions of Work Act and created Domestic Workers’ Board; Maharashtra enacted the Maharashtra Domestic Workers’ Welfare Board Act, 2009 and published a code of conduct and was considering specific legislation for domestic work. Karnataka and Kerala issued minimum wages for domestic workers.

In India, the Department of Labour does not monitor private households. In Thailand, labour inspection services only cover factories and other public workplaces, and therefore exclude domestic workers. Domestic workers in Thailand demanded that the labour inspectorate should receive their complaints and order employers to take corrective action. In terms of Chapter 12 of the Ministerial Regulations, domestic workers in Thailand are restricted to compensation for wage claims. Researchers reported that law enforcement officers ask migrant domestic workers to withdraw their claims in relation to rights violations to reduce them to wage claims (Foundation for Labour and Employment Protection, 2012).

In Peru, the absence of effective sanctions to address non-compliance with domestic workers' rights is a major challenge. The legislation does not expressly define the workplace to include private households, making it difficult to conduct labour inspections. The workers demanded that:

- the Ministry of the Interior enforce regulation of domestic work through police stations;
- the Office of the Ombudsman actively secure compliance with domestic worker rights; and
- the Ministry of Women intervene in cases of homicide.

In Ghana, domestic workers are entitled to seek recourse from the Labour Department and the courts. However, many workers are unaware that they can seek legal recourse and opt to resign when they have serious grievances.

South Africa's Labour Relations Act No. 66 allows workers to access the Commission for Conciliation, Mediation and Arbitration (CCMA) or the Labour Court to address employment-related grievances. The overwhelming majority of domestic workers who institute matters only do so after the termination of the employment relationship. The fact that very few of the cases are instituted during the employment relationship suggests that the formal enforcement process is inappropriate in the context of an intimate employment relationship. In addition, the capacity of the labour inspectorate (of 1000 inspectors) is inadequate to conduct inspections in millions of homes in the country.

2.1.5 Certification

Workers in Peru demanded the re-introduction of free labour certification of domestic workers. Labour certification is a requirement when seeking employment as a domestic worker, but it is too expensive for most domestic workers. The Ministry of Labour periodically allocates funds to provide for domestic workers' free certification with the certification institute. The Ministry of Labour accredited a different certification institution during the Law Project period, which led to workers' confusion about where to go for free certification.

2.1.6 Public sensitization about decent work for domestic workers

Domestic workers in Peru and Thailand demanded public campaigns to highlight the importance of decent work and the rights of domestic workers. In Peru, the limited dissemination of information about the legal rights and duties in the legislation has hampered employers' compliance with the law.

2.2 Minimum working conditions

2.2.1 Wages

Workers in India and Thailand called for the inclusion of domestic workers under the existing national minimum wage, or for a minimum wage for domestic workers to be established. They demanded that the law regulate payments in kind, that they receive written notice of payment, that employers pay them on time and in full, and that the law clearly regulates deductions from their wages. They also demanded that minimum wage rates be reviewed annually in line with inflationary trends.

Indian and Thai labour laws exclude domestic workers from minimum wage provisions. Thailand's Labour Protection Act and the Ministerial Regulations further exclude domestic workers from provisions that regulate deductions from workers' wages. While the Indian states of Karnataka and Kerala have established minimum wages for domestic workers, there are no clear norms for monitoring and enforcing compliance with the minimum wages.

In South Africa, Sectoral Determination 7 provides for sector-specific minimum wages, including minimum wages for the domestic sector. While this position is progressive, there are proposals for the introduction of wage differentials based on education, skills and experience. In Ghana, legislation provides for minimum wages. However, workers are receiving less than the minimum wages and few are aware that domestic workers are included in the minimum wages provisions.

2.2.2 Regulation of working time

Domestic workers in Ghana, India and Thailand demanded that the law limit their working hours and indicate the ideal number of daily or weekly hours. They also demanded mandatory daily and weekly rest periods, and overtime pay. In addition, they called for payment for on-call periods and for periods during which the employer was away.

Thailand's Labour Protection Act and the Ministerial Regulations exclude domestic workers from the working time and overtime provisions. Section 44 of Ghana's Labour Act also expressly excludes domestic workers from the provisions governing daily working hours and rest periods. Consequently, many domestic workers work for more than 12 hours per day, and are denied daily and weekly rest. Indian labour laws that regulate working hours and rest periods exclude domestic workers from their scope.

Peruvian labour law provides for an eight-hour working day, but employers do not comply with the law.

2.2.3 Leave provisions

The workers in Ghana, Peru and Thailand demanded paid annual leave, as well as sick leave and maternity leave on an equal basis as other workers. Thailand's Labour Protection Act and the Ministerial Regulations exclude domestic workers from maternity leave and maternity protection provisions. In Peru, the relevant law and its accompanying decree provides for 15 days' leave, which is half of what it grants to other workers.

By contrast, Ghanaian domestic workers are included in the Labour Act's provisions governing paid leave, annual leave, sick leave and maternity leave. However, some workers are unaware of their rights and duties and fear losing their jobs if they take time off work. Some Ghanaian employers reportedly deny domestic workers sick leave and often dismiss them on discovering that they are pregnant.

2.2.4 Accommodation

Domestic workers in all five countries demanded decent accommodation that affords them adequate privacy. They also demanded that employers provide them with adequate, good quality food. In India, workers demanded that women's hostels accommodate live-out domestic workers as well as live-in domestic workers on their day off.

The key challenge is that Ghanaian, South African, Indian and Thai labour laws do not specify the standards for accommodation that must be provided to domestic workers. This leaves domestic workers at the whims of their employers. In Peru, the law specifically requires that employers provide accommodation and food in line with the employer's socio-economic level.

2.2.5 Notice periods and severance pay

Workers in India, Peru and Thailand demanded that they be given adequate notice of termination of employment and receive severance pay. The challenge in Peru is that the law provides that domestic workers' severance pay amounts to half of that accorded to other employees. Thai labour law does not afford domestic workers severance pay, or pay for unused leave, on termination of employment.

2.3 Additional protections for domestic workers

2.3.1 Protection against discrimination, harassment and violence

Domestic workers in all five countries reported that they were vulnerable to discrimination, harassment (including sexual harassment) and violence by their employers. Workers in Thailand demanded that the Domestic Violence Act be extended to cover domestic workers to enable them to access the protection that the Act provides. In Ghana, workers complained of verbal insults, sexual harassment and abuse. Although the Labour Act covers domestic workers, it does not specifically regulate workplace harassment and abuse.

Domestic workers in India highlighted the need to address discrimination on the grounds of class, gender, caste, religion and geography. These workers also reported that police always consider them as suspects when a crime occurs in the household. Furthermore, they reported that employers regularly prohibit domestic workers from using their toilets during working hours.

South Africa's Employment Equity Act of 1998 aims to protect all employees from unfair discrimination. The Act's original provisions provided that it was not unfair to discriminate against workers on grounds of race, gender and sex i) for purposes of affirmative action; or ii) based on "an inherent requirement of the job." The amendments allow an employer to justify discrimination on the grounds that it is rational or otherwise justifiable. This means that employers have more room to discrimi-

nate against domestic workers on grounds that the Act did not previously allow. For example, an employer may refuse to employ an HIV positive worker because they may fear that they would infect their children with the virus. This is problematic in the absence of a rational or scientific basis for the employer's fear.

2.3.2 Occupational health and safety

Domestic workers in Ghana, India, South Africa and Thailand demanded that measures be taken to ensure their protection in relation to their occupational health and safety (OHS). Ghanaian domestic workers reported that they frequently experience knife cuts and body aches. This was attributed to employers' neglect of their occupational health and safety obligations in terms of the Labour Act. In South Africa, the Occupational Health and Safety Act No. 85 of 1993 covers domestic workers. However, the institutions that the Act establishes, such as health and safety committees, are designed for large formal workplaces. This makes them largely irrelevant to domestic workers in private households. The labour inspectorate responsible for implementing the Basic Conditions of Employment Act has the power to inspect private households, but lacks the power to enforce the Occupational Health and Safety Act.

Indian domestic workers are not covered by OHS legislation, which covers workplaces such as factories, plantations and mines. The workers highlighted the risks that cleaning and washing detergents and harmful chemicals pose to them. In Thailand, neither the Labour Protection Act, nor the Ministerial Regulations, protects domestic workers' occupational health and safety.

2.3.3 Social protection

Workers in all five countries demanded social protection to cover maternity leave, unemployment, old age, and compensation for occupational injuries and diseases.

Thailand's Social Security Act of 1990 provides for workers' compensation, maternity benefits, invalidity and disability benefits, child care, old age, and unemployment benefits. However, it excludes domestic workers from its scope.

In South Africa, workers are entitled to register with the Unemployment Insurance Fund (UIF). Compliance is low, as only an estimated 20 per cent of the country's domestic workers are registered with the Fund. Moreover, the UIF Act is enforced by means of labour inspection, making it difficult to secure general compliance due to the nature and enormity of the sector. A further challenge is that the Compensation for Occupational Injuries and Diseases Act No. 61 (COIDA) expressly excludes domestic workers from its scope. A positive feature is that domestic workers are entitled to state grants in their old age, provided that they meet the means test.

Ghana's Pensions Act No. 766 of 2008 includes domestic workers and therefore allows them to join pension schemes. Domestic workers are also eligible for membership in the National Health Insurance Scheme. Very few workers, however, are registered for these schemes. This is largely because many workers and employers are unaware of their respective rights and duties. In addition, some domestic workers are reluctant to have social security contributions deducted from their salaries.

In Peru, domestic workers are legally entitled to register for these schemes, but the uptake is limited due to their limited knowledge about the ease and benefits of registration. Like Ghanaian domestic workers, Peruvian domestic workers prefer to receive their full wage than to have contributions deducted from their wages. Another challenge in Peru is employers' unwillingness to register their domestic workers in the absence of effective sanctions for non-registration.

Consultations with domestic workers in India showed that domestic workers have limited access to social security for maternity, invalidity and retirement. This is despite the existence of the Unorganized Sector Workers Social Security Act of 2008, which includes domestic workers. This Act created a framework for the establishment of sectoral and state boards to establish welfare schemes for workers. This suggests that there are challenges in the implementation of the Act. The Maharashtra Domestic Workers Welfare Board provides social security for injuries, medical expenses, maternity and children's fees, which appears to be the exception rather than the rule.

2.4 Protection of vulnerable groups of domestic workers

2.4.1 Protection of child domestic workers

Workers in Ghana, Peru and Thailand called for the protection of child domestic workers. In Ghana, there is a link between child domestic workers and the tradition of fostering described under section 2.1.1 above. Some child domestic workers reportedly work on a full-time basis and are subjected to abuse, including sexual abuse. In Peru, workers demanded that the Ministry of Women and Vulnerable Populations protect teen domestic workers.

In India, certain state laws and the Government of India's Central Civil Service Conduct Rules prohibit government employees and civil servants from employing children below 14 as domestic workers. Moreover, the Child Labour (Prohibition and Regulation) Act of 1986 was amended to prohibit the employment of children as domestic workers in 2006. Despite these measures to combat child labour in the sector, the employment of child domestic workers remains a common practice.

2.4.2 Protection of migrant domestic workers

Researchers in South Africa, India and Thailand highlighted that migrant workers are employed as domestic workers in these countries.

In India, migrant workers are vulnerable and are at risk of trafficking for labour exploitation or forced labour. Besides being a site for inter-state trafficking, India is a source and transit country for trafficking women and girls to the Middle East for domestic work. The Inter-State Migrant Workers Act and the National Plan of Action Against Trafficking and the Child Labour Act are not effectively combating human trafficking in this sector.

Researchers reported that the majority of domestic workers in Thailand are migrants from Myanmar and other neighbouring countries, and most of them are undocumented. Although the Labour Protection Act extends protection to all workers regardless of their immigration status, employers violate the rights of undocumented migrants. Thai immigration regulations that allow irregular migrants to

work temporarily in Thailand prohibit them from traveling outside the provinces in which they are registered. This restricts their movement within the country, and arguably their freedom to choose where to live based on factors such as availability of work opportunities, family ties, and safety and security. In addition, Thailand's national health care scheme excludes undocumented migrant domestic workers.

South Africa's Labour Court has held that undocumented migrant workers are entitled to enforce their contractual and statutory rights in relation to their employment. In theory, this extends legal protection to these vulnerable workers and affords them some recourse against their employers. However, the risk that immigration authorities will identify and deport them may discourage workers from seeking redress.

2.4.3 Protection of part-time workers

The protection of part-time workers was highlighted as a concern in South Africa, where the Basic Conditions of Employment Act and the Sectoral Determination expressly exclude employees working for less than 24 hours per month from provisions regulating working time, paid leave, rest periods, and written contracts. This provision means that where a domestic worker works for less than 24 hours per week for an employer, the employer is not required to provide them with paid leave, rest periods and a written contract. This is particularly difficult for domestic workers who work on a part-time basis for several employers. For example, a domestic worker who works 20 hours for each of three employers, could not claim these protections from any or all of these employers.

2.5 Strengthened organizations and meaningful collective bargaining

Domestic workers in Ghana, India, Peru and Thailand highlighted the need for unions with strong organizational capacity to protect and to promote their rights and interests. South African workers called for legal reform to allow for organizational rights that are appropriate for the domestic sector.

Section 88 of Thailand's 1975 Labour Relations Act No. 66 limits the right to establish a trade union to workers of Thai nationality. This is a problem because most of the country's domestic workers are migrant workers. Domestic workers in Thailand called for a strong domestic workers' movement with the capacity to organize, represent themselves and promote their rights.

India's Trade Union Act of 1926 governs the collective organization of workers employed in industries, and excludes the private household from its definition of "workplace." The multiplicity of organizations that represent domestic workers at national and state levels complicates efforts to organize domestic workers in the country. In addition, the nature of the sector, with its multiple and inaccessible workplaces, and the high rate of attrition and instability, make it difficult to organize.

The South African Labour Relations Act No. 66's provisions on organizational rights (sections 12-16) are inappropriate for the domestic sector. The organizational rights are designed for the conventional Fordist workplace. The rights are difficult to apply to individualized employment relationships in the private household. The rights are also inapplicable to temporary employment agencies that operate in the sector because the "workplace" in such cases would be the agency's office. This is far removed from the client's home, where the domestic worker works.

Because the Labour Relations Act No. 66 does not provide for more appropriate forms of worker organization for the domestic sector, domestic workers do not benefit significantly from the Labour Relations' Act provisions. Additionally, collective bargaining as envisaged in the Labour Relations Act is inappropriate for the domestic sector because employers in the domestic sector are not organized. Moreover, the low rates of unionization among the domestic workers prevent them from meeting the Act's criteria for representivity.

South Africa's Basic Conditions of Employment Act provides for stakeholder consultation to inform the Minister of Labour's determination of minimum wages for the sector. However, the absence of a legal duty to consult or to negotiate with stakeholders hampers meaningful engagement with domestic workers on wage-setting. Thus, domestic workers make representations that do not significantly affect the minimum wages that the Minister ultimately determines.

2.5.1 Education and skills development

Domestic workers in all five countries wanted to improve their education and skills through formal schooling or training courses. Peruvian workers demanded free Sunday education and training programmes to build their capacity. In South Africa, workers suggested that skills development and training within the domestic sector could increase workers' chances of demanding higher wages.

In South Africa, section 20 of the Skills Development Act provides for the development of training programmes for workers in all sectors. Very few programmes have been developed for the sector in the absence of a duty on the state to provide for the sector. While trade unions could be an appropriate vehicle for skills development, their weak organizational capacity would threaten the sustainability of training activities.

2.6 Regulation of employment agencies

Domestic workers in Ghana, India and Thailand reported that some employment agencies exploit workers in their sector. They demanded that these agencies be appropriately regulated to protect the workers from exploitation. They demanded laws that require agencies to register and to promote fair working conditions. They further called for sensitization campaigns about unscrupulous agencies.

Section 7(7) of the Ghanaian Labour Act allows employment agencies to charge workers for placing them with employers, contrary to Convention 189. Some agencies reportedly deduct fees from domestic workers' wages for up to two years or more. Moreover, some agencies refuse to reimburse workers for half of the registration fee after failing to place them.

In India, domestic workers reported that some unscrupulous agencies deduct fees from workers' wages in perpetuity. Some agency staff harass and rape domestic workers, and some are involved in corruption and adoption rackets. The law that governs employment agencies does not apply to those operating in the domestic sector because the definition of a workplace excludes the private household.

3. Continuing the Struggle: Lessons from the Five Countries

This section consolidates the key lessons learned from the research and the activities undertaken in the domestic sector in the five project countries. It begins by highlighting the significance of law in domestic workers' struggles. It ends with some recommendations to inform the efforts of organizations seeking to provide legal and technical support to domestic workers.

The above analysis indicates that the five national legal frameworks protect domestic workers to differing degrees, with Indian domestic workers experiencing very limited protection. Labour laws in Ghana, South Africa and Thailand that protect all workers also cover domestic workers to a large extent. South Africa, Thailand and Peru have specific regulations that regulate domestic work. South Africa and Thailand regulate domestic work within the scope of general labour legislation and sector-specific laws.

These different approaches point to the need to strike an appropriate balance between treating domestic work as “work like any other” and treating it as “work like no other” (Smith, 2012). The analysis suggests that a balanced approach is needed to ensure equity of domestic workers, while taking into consideration the unique characteristics of the sector where this is necessary to protect them.

Despite efforts to protect domestic workers in these five countries, workers' concerns and demands revealed that their work is largely informal. On the one hand, domestic work is informal due to the absence of law or legal provisions to protect domestic workers. This was most evident in India, where the overwhelming majority of the central labour laws expressly or implicitly exclude domestic workers from their scope. There has been limited progress towards the enactment of central legislation for domestic workers in India. In the other countries, domestic workers have limited protection and are excluded from certain legal provisions.

On the other hand, the fact that laws to protect domestic work exist does not automatically mean that the sector is formalized. Despite the protection of domestic workers in law, domestic work is still informal in practice. Informality results from the limited or poor implementation of the laws and failure by domestic workers to claim the protection that the law provides.

Informality in practice is attributable to several interrelated factors that relate to the nature of the sector, social perceptions about the sector, the institutional and procedural framework for securing legal compliance and limited willingness and/or capacity on the part of the government and workers' organizations. In addition, some of these factors relate to the circumstances and attitudes of workers. These are presented in the table below.

Table 1: Synthesis of workers' challenges and issues

<i>Nature of challenge</i>	<i>Elaboration</i>
<i>Shortcomings of legislation</i>	Labour law does not recognize domestic workers as workers Labour law extends some, but not all, rights to domestic workers
<i>Nature of the work and sector</i>	Intimate nature of the work and employment relationship Work in the private home as opposed to conventional workplace
<i>Perceptions about domestic work</i>	Work is undervalued and not perceived as “real work” that contributes to the economy Tradition of fostering blurs distinction between paid employment and mutual assistance
<i>Institutional and procedural framework and capacity for promoting compliance</i>	Absence of institutions and procedures to protect domestic workers Reliance on inspections not appropriate for this sector Formal dispute resolution may be inappropriate given intimate nature of work and relationship Multiplicity of workers and inaccessibility of workplace makes it difficult to organize workers
<i>Factors relating to workers' organizations</i>	Multiplicity of workers and inaccessibility of workplace makes it difficult to organize workers Collective bargaining modeled on Fordist workplace inappropriate for domestic sector Limited scope for bargaining with employment agencies
<i>Factors relating to employers</i>	Lack of awareness of legal provisions Hostility and resistance to legal provisions Desire to minimize costs and “hassles” associated with employment

The discussion in section 2 showed that even in countries with relatively good laws to protect domestic workers, the workers still reported several challenges. This suggests that appropriate laws and legal provisions might be necessary, but are not sufficient to secure the recognition of domestic workers as workers, the extension of rights to domestic workers and the effectiveness of mechanisms for enforcement and dispute resolution. It is therefore important to consider the broader socio-economic, attitudinal, cultural, sectoral, institutional and capacity-related factors that may impede the implementation of laws and the realization of their objectives. This requires that struggles to secure legal rights for domestic workers transcend advocacy for legal reforms, and seek to highlight and address the factors that hamper the process of turning law into reality for domestic workers.

The following recommendations draw on the analysis of the process of struggle that domestic workers and their organizations engaged in. These may be useful for organizations seeking to support domestic workers, particularly on legal issues.

Start with workers' situations and challenges, and not with the law. Instead, begin by engaging with workers themselves to understand their experiences and challenges. Second, do not impose strategies and make unilateral decisions. Involve workers as equal partners to avoid a “top-down” approach that imposes decisions and legal strategies on workers. Strategies should be developed that are tailored to local conditions, priorities and capacity.

Build capacity to develop workers' agency. Workers must own and actively engage in the struggle for decent work. This speaks to the need, as far as possible, to ensure that workers play an active role in

selecting and implementing the legal strategies used in advocacy. This would involve equipping them with the knowledge and skills to conduct research, to speak with confidence and understand processes of engagement with law-makers and other stakeholders. As Poonsap Tulaphan of HomeNet Thailand explains, “[the workers] themselves have to raise their voices. Domestic workers should own the issues and they should talk about their stories... No one else can effectively raise their issues.” In addition to ensuring that workers have a sense of ownership of their struggles, it is also important for ensuring the sustainability of the struggles even after a project is completed.

Marry technical legal support with efforts to effect structural change. Do not assume that that workers’ problems relate only to problems with the existence and content of the law, limited knowledge of the law and inadequate mechanisms to implement the law. Pay attention to the role that less visible factors – including power dynamics within the employment relationship and society’s norms about who and what work is valuable – play in defining domestic workers’ position.

Build on and support existing initiatives where possible. This must be informed by a stakeholder-mapping exercise to identify other actors that have similar objectives. Collaborating with credible institutions and organizations that have similar objectives helps to avoid duplication and fragmentation of processes. Strengthening local actors that are already active ensures some continuity after a project is completed.

APPENDIX I: Summary of Workers' Demands and Legal Issues in Each Country

Workers' Demands

<i>Country</i>	<i>Demands</i>
<i>India</i>	<ul style="list-style-type: none"> • Extention of definition of worker and workplace to include domestic work and the private household. • Formal employment contracts: need to develop a model employment contract. • Minimum wages based on tasks performed, working hours, skills. • Collective organization and bargaining power of domestic workers (currently fragmented). • Requirement for written notification of amounts due to the workers and amounts paid. • Monthly payment of wages. • Social protection: maternity, invalidity, retirement. • Maximum 48 hours per week, including provision for overtime (double pay) and daily rest periods. • Payment for on-call period and payment of the domestic worker even when the employer is away. • Weekly rest periods (one day a week), paid annual leave (two weeks), sick leave and maternity leave. • Freedom from sexual harassment against domestic workers. • Freedom from discrimination and harassment of domestic workers by the police. • Regulation of unscrupulous employment agencies that deduct money from the domestic workers in perpetuity, some involved in harassment, rape, corruption and adoption rackets. This could include compulsory registration of all agencies, conditional upon their promotion of fair working conditions. • Freedom from discrimination on the grounds of class, gender, caste, religion and geography. • Promote OHS for domestic workers such as by providing protection from cleaning, washing detergents and harmful chemicals. • Decent living conditions (e.g. not given enough washing powder to wash their clothes, inadequate or inferior quality of food). • Domestic workers want to be able to educate their children. • Grievance/dispute mechanisms. • Provision for inspection and enforcement of legislation, special provisions to allow access to the private home as a workplace. • Capacitated trade unions able to assist migrant domestic workers (e.g. language barriers). • Inclusion of dearness allowance, linked to the CPI, to ensure that minimum wages do not fall below the cost of living. • Clear provisions on in-kind payments. • Annual wage increment. • Adequate accommodation which allows for the worker's privacy. • Treatment that is not less favourable than that afforded to other workers. • Adequate notice on termination of employment. • Women's hostels for live-out domestic workers and for weekly day off for live-ins.

Country	Demands
<i>Ghana</i>	<ul style="list-style-type: none"> • Fair wages, payment done on time • Regulation of recruitment agencies • Written contracts • Reasonable working hours and rest periods • Access to social security and health insurance • Annual leave and sick leave • Maternity protection • Working environment that protects their health and safety • Freedom and protection from abuse and harassment • Strong trade union/movement of domestic workers • Decent and wholesome food • Decent accommodation • Mutual respect • Medical care • Equal pay for domestic workers
<i>Peru</i>	<ul style="list-style-type: none"> • Ratification of C189. • Compliance with the laws and regulations covering domestic workers. • Strengthening the organization (the bases in the different regions/provinces). • Empowerment and strengthening of the union structure. • The reformulation of the existing legislation regarding domestic workers. • The establishment of the minimum wage for the sector. • The eight-hour working day (recognizing overtime). • The need for a written labour contract. • The mandatory issuance of the work certificate. • Protection of teen domestic workers. • The process of ratification of ILO's C189. • The registration of domestic workers in municipalities. • The registration of their contracts with the Ministry of Labor, supervision of those employment agencies which violate their rights. • That the Ministry of Justice informs regarding prosecuted cases of domestic workers. • That the Ministry of Interior, via the police stations, serve the domestic worker population. • That the Office of the Ombudsman be vigilant regarding the compliance of their rights. • That the Ministry of Women Affairs intervene with regards to cases of homicide • Free Sunday education. • Protection of teen domestic workers through the Ministry of Women and Vulnerable Populations.

Country	Demands
<i>South Africa</i>	<ul style="list-style-type: none"> • Decent, living wages that take account of the socio-economic contribution of domestic work. • Decent and private accommodation and decent quality and adequate food. • Recognition of skills, experience and education in the wage structure. • Opportunities and incentives for skills development to upgrade themselves. • Meaningful collective bargaining with government, employers and employment agencies. • Organizational rights that are relevant to the domestic sector and that promote the empowerment of domestic workers. • Extension of regulation of working hours, paid leave, rest periods. • Duty to provide written contract to all domestic workers. • Freedom from violence and harassment and limits on rights of access to domestic workers' families or children. • Protection against discrimination based on unfair prejudices. • A process of enforcement that is appropriate considering the intimate nature of domestic work and the size of the sector. • Access to social security, especially under the Compensation for Occupational Injuries and Diseases Act No. 61. • Protection and empowerment of migrant domestic workers.

PROBLEMATIC ISSUES IN EACH COUNTRY

Country	Issues
<i>India</i>	<ul style="list-style-type: none"> • Workers engaged in personal service are not considered as workers for purposes of labour law and the private home is not considered a workplace to which labour laws apply. • Lack of comprehensive national legislation governing all aspects of domestic work. • No clear definition of domestic work, should it be defined by place of work, nature of work etc. and what kind of tasks should be included. • Lack of monitoring of domestic sector by department of labour. • The few sectoral boards that exist end up focusing on giving workers their money and not addressing substantive issues affecting the workers. • Challenge of registration of workers with the wrong sectoral board, which would potentially threaten the establishment of a domestic workers' board. Also, lack of measures in place to properly calculate and collect the contributions from workers and employers. • How to adequately address trafficking in persons and its linkages with labour migration for domestic work.

Country	Issues
<i>Thailand</i>	<ul style="list-style-type: none"> • Section 88 of the South African Labour Relations Act No. 66 of 1975 (LRA) limits the right to establish a trade union to workers of Thai nationality, the problem being that most domestic workers in Thailand are migrant workers. • The immigration regulations allowing irregular migrants to work temporarily in Thailand prohibits them from traveling outside the province in which they were registered. • Ministerial Regulation No. 14 of 2012 extends some of the LRA's protections to domestic workers but not all: <ul style="list-style-type: none"> o No provision for maternity rights. o No prohibition of termination of employment due to pregnancy. o Legislation and regulations on minimum wages do not cover or include domestic workers. o No clear stipulation of maximum working hours and overtime. o No prohibition of wage deduction. o No compensation at termination of employment. • Domestic workers excluded from social security which includes occupational injuries and diseases, maternity benefits, invalidity and disability benefits, child care benefits, old-age benefits, unemployment benefits. • Limited monitoring and enforcement of the existing provisions that cover domestic workers: labour inspection limited to factories etc. • Limited remedies for the violation of migrant domestic workers' rights – mainly wage claims are used to compensate the worker and the worker may be asked to withdraw the claims relating to human rights violations. • Undocumented migrants (who are most migrant domestic workers) excluded from health care social security scheme.
<i>Ghana</i>	<ul style="list-style-type: none"> • Most legal provisions (e.g. annual leave, sick leave, social security) are in place and cover domestic workers, but the workers are unaware that the legislation covers them and that the rights and protections apply to domestic workers. Also, many employers are unaware of their duties and domestic workers' rights. • Labour Act provisions on working time and rest periods explicitly exclude domestic workers from their scope. • Labour Act allows employment agencies to deduct fees from workers, leading to some abuses, e.g. deductions from salaries over two years, and do not reimburse the workers half of the fees charged when they fail to secure job placements for their workers. • Tradition of fostering of children blurs the line between domestic work and family arrangements.
<i>Peru</i>	<ul style="list-style-type: none"> • Law's unequal treatment of domestic workers (<i>viz.</i> other workers, e.g. the domestic workers' bonus, annual leave and severance pay are half of what other workers receive). • Poor implementation of provisions including requirement for employers to provide workers with contracts and register them for social security benefits. • Absence of legal sanctions for non-compliance with the law. • Limited enforcement of the prohibition of child labour.

Country	Issues
<i>South Africa</i>	<ul style="list-style-type: none"> • Most organizational rights set out in sections 12-16 of the LRA are not applicable to the domestic sector as they are designed for the Fordist workplace model. • Organizational rights are problematic in the case of employment agencies placing domestic workers because the workplace is the agency's office and the agency typically places individual workers with individual employees. • The LRA does not provide alternative forms of worker organization that would be more suited to the DW sector — the same applies to worker organizations promoted by other statutes (e.g. health and safety representatives or committees in terms of the OHS Act). • Domestic workers are left to their own devices for organization. • Collective bargaining in section 23 of the LRA is a challenge because there are no employers' organizations, not enough representivity in the domestic unions either for bargaining councils or statutory councils, and challenges in organizing agency workers. • Absence of a legal duty to consult or negotiate leads to limited substantive, meaningful engagement on wage-setting. Domestic workers make representations without any visible results. • Wages set at single minimum wage with no differentiation per experience, education and skills, all workers are treated as being at the least skilled level. • Limited skills training in the domestic sector. • No duty on the State to push for training programmes for domestic workers. An organization of domestic workers would be the best vehicle, but the current union is not very strong.

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About WIEGO: Women in Informal Employment: Globalizing and Organizing is a global research-policy-action network that seeks to improve the status of the working poor, especially women, in the informal economy. WIEGO builds alliances with, and draws its membership from, three constituencies: membership-based organizations of informal workers, researchers and statisticians working on the informal economy, and professionals from development agencies interested in the informal economy. WIEGO pursues its objectives by helping to build and strengthen networks of informal worker organizations; undertaking policy analysis, statistical research and data analysis on the informal economy; providing policy advice and convening policy dialogues on the informal economy; and documenting and disseminating good practice in support of the informal workforce. For more information visit: www.wiego.org.



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