

‘Help somebody who help you’: The Effect of the Domestic Labour Relationship on South African Domestic Workers’ Ability to Exercise their Rights

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Abstract

Domestic labour is widely recognised as one of the most vulnerable labour sectors, both nationally and internationally. In South Africa, Sectoral Determination 7 (S.D.7) was specifically promulgated to protect domestic workers’ rights and provide them with the means to negotiate with and hold employers to account. However, research over the past decade has demonstrated that while some areas of domestic labour have improved, many workers are still locked in exploitative labour relationships. This article explores the dynamics of the domestic labour relationship using extracts from interviews with domestic workers. It argues that paternalistic relationships can have as limiting an effect on workers’ ability to exercise their rights, as fear and exploitation.

Keywords: domestic labour, South African labour policy, Sectoral Determination 7, paternalism

Introduction: Domestic Work in Context

Domestic work is defined as any labour performed in and for private households, and domestic workers as persons employed to perform this work, who receive or are ‘entitled to receive’ remuneration for their labour

(Republic of South Africa, R.S.A. 2002:30). In South Africa, this definition has been extended to include housekeepers, gardeners, personal drivers, and care givers (R.S.A. 2002), whether ‘independent contractors’ (du Toit 2010:215) or employed or supplied by employment services (R.S.A. 2002). Domestic work is typically gendered, and is a major source of employment for women from marginalised and/or disadvantaged backgrounds (International Labour Office, I.L.O. 2012). Globally, there are an estimated 52.6 million domestic workers, 83% of whom are women (I.L.O. 2012). In South Africa, the estimated number of domestic workers range between 861,000 (Statistics South Africa 2013:xi) and 1.15 million (South African Institute of Race Relations, 2013), 96% of whom are women (Statistics South Africa 2013). Put another way, domestic work provides employment for approximately 1 in 5 South African women (du Toit 2010). However, local and global figures are generally believed to be underestimates and real figures are likely to be somewhat higher (Grobler 2012; I.L.O. 2012).

Legislative Framework

Both locally and abroad, domestic labour is decried as being a vulnerable and marginalised labour sector (I.L.O. 2012:2). Globally, domestic workers’ conditions of employment are characterised by low wages; long and irregular hours of work; tenuous security of employment; discrimination or personal abuse; and difficulty in enforcing employment benefits such as overtime, minimum wage, maternity leave and so forth, where these are provided for in the local legal framework (De Waal 2012; Horton & Vilana 2001; Magwaza 2008, Motala 2010). According to the I.L.O., domestic labour is often ‘explicitly or implicitly’ excluded from states’ labour policies, as it is viewed as falling outside of the “‘productive’ labour market” (I.L.O. 2012: 2). As a result of this exclusion, domestic workers are made more vulnerable to exploitation (I.L.O. 2012: 2). In recognition of this, the I.L.O. recently adopted the Domestic Workers Convention (No. 189) and supplementary Recommendations (No. 201), aimed at encouraging member states to develop policy to protect the labour rights of domestic workers. In justification, the I.L.O. argues:

Bringing domestic workers, who are to a large majority women and

migrants, under the protection of labour legislation is a matter of gender equality and equal protection under the law: *a question of human rights* (2012: 3 e.a.).

South Africa's current policies on domestic labour compare very favourably to those of other states' and are viewed as extremely progressive (Ally 2010). During apartheid, domestic labour was 'situated in a legal vacuum' (Cock 1989:6), as there was no legislation to regulate working conditions or to protect domestic workers. As a result, hours were long and leave irregular (Cock 1989), and wages were not subject to rulings by the Wage Board and thus were 'notoriously bad' (Posel 1991:173). The system of influx control made it extremely difficult for a domestic worker to change their place of employment if working conditions were bad, effectively binding the domestic worker to her employer (Cock 1989). Conversely, due to the lack of legal protection, domestic workers could be instantly dismissed at the employer's whim (Cock 1989). Live-in domestic workers were commonly housed in outside rooms that were 'small ... simple and ... crude', often without electricity or hot water, and furnished with the employer's castoffs (Ginsburg 2000:84). Workers were provided with 'servant's rations' – food products that were distinctly inferior to that consumed by the employer and her family – and were expected to eat their meals in their room or outside, using inferior utensils reserved for their private use (Archer 2011). In sum, 'paid domestic work under apartheid (was) defined by exploitative pay, oppressive working conditions, and dehumanising racism and sexism' (Ally 2010:2; Cock 1989).

After 1994, a series of post-apartheid labour legislation¹ was promulgated to extend the human rights enshrined in the Constitution (R.S.A. 1996: Chapter 1) to all workers. Initially, domestic labour was governed by these general labour policies. However, due to problems with regulating domestic workers' conditions of employment under the general provisions of the B.C.E.A., Sectoral Determination 7 (S.D.7; R.S.A. 2002) was specifically enacted to regulate the minimum conditions of employment for domestic workers. As a result, South African domestic workers are now protected by,

¹ The Labour Relations Act (L.R.A.) 66 of 1995, the Basic Conditions of Employment Act (B.C.E.A.) 75 of 1997 and the Employment Equity Act (E.E.A.) 55 of 1998.

a national minimum wage²; mandatory formal contracts of employment³; state-legislated annual increases; extensive leave⁴; severance pay⁵; formal registration⁶; a government-sponsored pension fund; access to unemployment insurance benefits (a world first); and a national certificate and qualification in domestic work through government-sponsored training (another world first) (Ally 2010:3).

Thus, S.D.7 was specifically designed to bring domestic workers under the protection of the law, and to extend human rights to this particular labour sector. Policy makers tried to balance competing imperatives in the development of S.D.7: on the one hand, to assure the rights of domestic workers, in terms of a rights-based discourse and the stipulations laid down by the Constitution; and on the other hand, to make provision for the particular social and historical context of domestic labour. Hence, in S.D.7 we find clauses that are absent from the B.C.E.A.; for example, the recognition of payment in kind, the provision of food at the work place, and regulations around the provision of accommodation for live-in domestic workers. S.D.7 also provides explicit regulation of the duration of “shifts” and the permissible frequency of “overtime” and “standby” duties. These latter examples demonstrate how the creators of S.D.7 imported regulations from other labour legislation and incorporated these into domestic labour legislation, in an effort to address live-in workers’ existing circumstances and limit exploitation.

Enforcement of S.D.7 is to be carried out by inspectors from the Department of Labour, who handle contraventions of the Act. If an inspector

² Part B, S.D.7 (R.S.A. 2002:6 – 13). Rates are determined according to how many hours per week a domestic worker works (more than 27 hours, or less than 27 hours), and where this labour is performed (urban or rural areas). As of December 1 2012, this minimum wage was increased by 7%.

³ Part C, S.D.7 (R.S.A. 2002:14-15).

⁴ Family leave in particular has been increased, in recognition of the gendered nature of domestic labour (du Toit 2010).

⁵ Section 25, S.D.7 (R.S.A. 2002:27)

⁶ This allows workers to claim from the Unemployment Insurance Act (U.I.F.) on termination of employment.

cannot resolve the issue, it is referred to the Labour Court. S.D.7 thus aims to provide for minimum conditions of employment while managing the vulnerability of this sector, without precluding any benefits offered to individual workers by employers.

Impact of S.D.7

Studies examining the impact of S.D.7 have had mixed findings. There is some evidence that domestic workers have used the legislation to challenge their employers in the labour courts or through the Commission for Conciliation, Mediation and Arbitration (C.C.M.A.; Magwaza 2008). Magwaza (2008:85) argues that this demonstrates that 'the introduction of the Act has empowered some domestic workers and encourages them to demand their rights'. The nominal wages of domestic workers has risen since 2002 (Hertz 2004 in du Toit 2010; C.A.S.E.⁷ 2010), indicating another positive effect of S.D.7. In addition, leave is now regulated, and domestic workers have reported improvements in this regard (Magwaza 2008). S.D.7 also provides regulations concerning the forms of accommodation that may be provided to live-in domestic workers, and seeks to regulate the standards of accommodation; limit the deductions that can be made from the worker's salary for this accommodation; and provide for equitable means of eviction upon termination of the worker's contract (S.D.7 2002). In these ways, it has been argued that S.D.7 has improved the situation of domestic workers in South Africa (C.A.S.E. 2010).

However, it has also been found that S.D.7 has had some unintended, negative consequences. The first of these is that S.D.7 has in some cases negatively affected relations between workers and employers. For example, one of Magwaza's participants reported that her employer was so 'angry' at being "raided" by a Department of Labour officer that she refused to give her worker a customary annual increase, arguing that the worker was already 'far too above the minimum wage' (2008:88, *sic*). Domestic workers in Magwaza's study stated that some employers perceive S.D.7 to be a 'government imposition that brought about an unnecessary intrusion', resulting in 'strained relations between employers and employees' (2008:87).

⁷ Community Agency for Social Enquiry.

Secondly, S.D.7 makes provision for “payment in kind” by stipulating that (where relevant) it should be provided for in the terms of the employment contract. “Payment in kind”, a practice stemming from colonialism and apartheid, refers to the provision of items such as food, clothing, pensions, transport costs, unwanted household items, leftovers, or medical care, in addition to a minimum wage (Cock 1989; Durrheim, Jacobs & Dixon, under review; R.S.A. 2002; Sylvain 2001). Beyond the stipulation stated above, S.D.7 does not regulate these practices or provide a means of assessing the maximum percentage of the domestic worker’s wage it may lawfully constitute. As a result, studies investigating “payment in kind” have had mixed findings. One study showed that domestic workers feel that “payment in kind” is an important element of their working relationship with their employers (C.A.S.E. 2010). Sylvain (2001:734) argues that “payments in kind” are constructed by workers as “gifts”, which serve to make the relationship more palatable as they ‘maintain a perceived bond of reciprocity and mutual assistance’.

In terms of food provision in particular, C.A.S.E. (2010) and Archer (2011) demonstrated that the end of apartheid and the introduction of S.D.7 has also had a mixed effect. Archer (2011:79) found that while some (live-out) domestic workers report that the quality of food they receive has improved since 1994, domestic workers generally receive ‘less food in total than they did during apartheid’ (2011:79). Additionally, Archer (2011) argues that food provision – while seemingly in line with S.D.7 – is often regulated by implicit rules reminiscent of the apartheid-era practice of “servants’ rations”, which discriminate against domestic workers. Some participants in the C.A.S.E. (2010) study felt they were worse off after the introduction of S.D.7, as employers are no longer permitted to deduct money for food and thus began providing less and/or poorer quality food for their domestic workers.

A third issue concerns restraints placed on Department of Labour officials expected to monitor the working conditions of domestic workers. Labour officials are prevented from ‘entering domestic premises without the home-owner’s consent’, and thus are unable to monitor working conditions where employers are absent or unwilling to allow them entry (Bamu 2011; du Toit 2010:223). Labour officials cite this as a ‘major obstacle’ to the effective monitoring of working conditions for domestic workers, and have called for this to be amended in S.D.7 (du Toit 2010:223).

A final area of concern is around the number of working hours, and the provisions regarding overtime, night work and “standby”. S.D.7 provides explicit regulations of the number of working hours a domestic worker may be required to work, but allows for overtime, night work and standby duty, where this is ‘in accordance with an agreement concluded by the employer and the domestic worker’, and if this agreement is made in writing (R.S.A. 2002:16). These clauses are aimed particularly at protecting live-in domestic workers, who are more vulnerable to exploitation in this regard. However, studies (C.A.S.E. 2010; Magwaza 2008) have suggested that these regulations are not easily negotiated by domestic workers. The C.A.S.E. study found that while live-out domestic workers’ hours fell within the stipulations of S.D.7, live-in domestic workers’ hours ‘often seemed to be in sharp contradiction to the law’ (2010:33). In addition, C.A.S.E.’s (2010) findings suggest that live-out domestic workers found it easier to negotiate overtime pay, as there is a clear distinction between normal working hours and overtime; while these boundaries are blurred for live-in domestic workers, making them more vulnerable to exploitation in this regard (C.A.S.E. 2010).

The Limitations of S.D.7

Several explanations for the continuing exploitation of South African domestic workers have been explored in the literature. One factor that has been identified concerns the matter of implementation of S.D.7, and the fact that this is dependent on individual employers in private contexts (Bamu 2011; du Toit 2010). Firstly, the ‘indifference or resistance’ of employers to implementing the changes brought about by S.D.7 has been identified as a key issue (du Toit 2010:224). This ‘indifference or resistance’ is heightened by the nature of the domestic labour space, a space conflated with the private home space of the employer (Cock 1989; Fish 2006). As it is a private space, it is ‘hidden’ from the public eye (Fish 2006:116), rendering the employer “sovereign” in her own space. Archer (2011) found that her sample of South African female employers rarely discussed the nature of their relationship with their domestic worker with friends or partners, suggesting there may be a lack of social pressure to enact fair labour practices in the home. As a result, Fish has suggested that ‘official labour policies (are rendered) *virtually*

meaningless within the private or hidden household work space’ (2006:116 e.a.), as this space ‘is difficult to monitor’ (2006:117).

Another explanation linked to the issue of the domestic labour space is the geographical isolation of domestic workers as a labour force (Ally 2008; du Toit 2010). Due to this geographic isolation, domestic workers are essentially ‘atomised’ (Cock 1989:22), meaning that there is no “shop floor” in which to share grievances, build moral support, or rally around injustices. As such, domestic workers’ unions have in the past had difficulty in rallying workers to their cause (although see Fish 2006 for a case study of successful lobbying by a domestic worker union). Even at the height of its popularity during apartheid, the South African Domestic Workers Union (S.A.D.W.U.) had 85,000 members of approximately 1 million workers nation-wide – less than 10% (Ally 2008). Paradoxically, in the democratic climate of post-apartheid South Africa, the only *national* domestic worker union’s⁸ membership has dropped from 11% at its launch in 2000 to 3% by 2001 (Fish 2006:121), and in 2011, S.A.D.S.A.W.U. was deregistered by the Department of Labour. While S.A.D.S.A.W.U. remains active, its deregistration means that its efficacy as a lobbying power for domestic workers is limited. For example, it cannot refer members’ disputes to the C.C.M.A. and is prevented from forming a Bargaining Council, to bargain at a national level for domestic workers’ rights (Kruger 2008). Research has suggested that domestic workers may have “lost faith” in domestic worker unions: Ally’s (2008) participants preferred to spend wages on insurance policies providing private legal assistance, than on union fees; and Magwaza’s (2008:88) participants stated that ‘membership does not guarantee you anything’, and that union fees are a ‘waste of money’. Additionally, some studies have reported that domestic workers may come under “fire” from their employers, should they openly affiliate themselves with a union (Ally 2008; C.A.S.E 2010; Fish 2006). Issues around unionisation may be compounded by the geographical isolation of workers, which results in there being ‘no single typical domestic worker experience in South Africa’ (C.A.S.E. 2010:64). This absence of a communal “shop floor” is hence one of the difficulties in rallying workers around the enforcement of laws regulating domestic labour.

A third barrier to implementing S.D.7 legislation is workers’ “limited

⁸ The South African Domestic Service and Allied Workers Union (S.A.D.S.A.W.U.)

Knowledge” of their rights and their capacity to enforce them. It has been found that workers’ general knowledge of their rights has increased since the introduction of S.D.7, but that their knowledge of specific provisions is ‘poor’, ‘contradictory’, or ‘incorrect’ (C.A.S.E 2010:64; Horton & Vilana 2001; Magwaza 2008). It has also been found that workers’ capacity to enforce these rights may be limited by fear of backlash or reprisal by employers (Horton & Vilana 2001; Magwaza 2008). As Magwaza argues, ‘*knowledge* about one’s rights and labour laws applicable to a job is *not enough* because most participants said they would prefer not to ... risk the possibility of losing their jobs’ (2008:88, e.a.). Thus, the spectre of poverty and unemployment is believed to limit domestic workers’ capacity to insist on their rights (du Toit 2010). In addition, du Toit (2010) argues that the devalued conception of domestic work results in the low self-esteem of domestic workers, which acts as a barrier to reducing power imbalances between domestic workers and their employers.

In sum, domestic labour is perceived – nationally and internationally – as a vulnerable labour sector, characterised by exploitation, poor working conditions and gender inequality. Nationally, and internationally, it has been argued that this can be addressed through legislation which entrenches human rights and an ethos of ‘decent work’ for domestic workers (du Toit 2010; I.L.O. 2012). S.D.7 demonstrates how South African policy makers attempted to weld a rights-based labour framework onto a problematic socio-historical context to promote and protect domestic workers’ rights. While S.D.7 has gone some way in improving working conditions for domestic workers, research has demonstrated that many domestic workers are still locked in exploitative working relationships. Explanations for why this is the case have centred on the perceived lack of access to legislated rights and/or a lack of compliance with S.D.7. The recommendations made to address these limitations have, for the most part, focussed on ways of enforcing the rights promulgated by S.D.7 and educating domestic workers about these rights (Bamu 2011; C.A.S.E. 2010; du Toit 2010). Both these explanations and recommendations can therefore be said to be informed by a rights-based approach.

The Limits of Rights-based Approaches

The barriers to implementing domestic labour legislation suggest that there

may be features of the institution and practice of domestic labour that are difficult to reach by way of the worker rights-based approach that informs S.D.7. The legislation recognised that workers are vulnerable, subject to exploitation, and in need of protection from the state (Ally 2008). In addition, the legislation also addresses the domestic worker as an agent, someone who is able to access her rights, negotiate with her employer, and use the legislation to hold her employer to account. The primary thrust of the legislation is to empower workers to exercise their rights and to protect themselves as they do so. Most important, the legislation seeks to protect the worker from being unfairly dismissed in the event that they challenge their employer.

However, the application of worker rights legislation reaches its limits in the domestic labour context where it is not only the fear of dismissal that prevents workers from exercising their rights. The longstanding, intimate and caring relations that often develop between workers and employers can also serve to undermine the ability of domestic workers to recognise exploitation and to take steps to change the status quo. Many domestic workers feel that they are “part of the family” and prefer not to enforce their legal rights in order to maintain “personalized relations” with their employers (Ally 2010). Such relationships are often characterized by paternalistic care in which beliefs, affections, and feelings of gratitude develop in a relationship which is perceived to be caring, fair and symbiotic (Durrheim *et al.* under review; Cock 1989; Hickson & Strous 1993; Sylvian 2001).

In addition to the fear of dismissal, social psychological features of these interpersonal relationships might affect the ability of workers to recognise and exercise their rights. Paternalistic relationships are governed by powerful group members who portray subordinates as weak (in need of care) and warm (deserving of care) (cf. the Stereotype Content Model in Fiske, Cuddy, Glick & Xu 2002). Jackman (1994) argued that for these relationships to endure, subordinate group members must be convinced of its logic – that they *need* the dominant group’s protection and assistance, and that acts of ‘caring’ demonstrate the dominant group’s affection for them. These relationships are therefore difficult to resist, as subordinate group members are recruited into a system of care and affection, which engenders gratitude and loyalty. Conflict between groups is thus circumvented, as the subordinate group is ‘bound emotionally and cognitively in a framework that is of the dominant group’s definition’ (Jackman 1994:15). Thus, the paternalistic

expression of care serves to shore up the privileged status of the dominant group⁹.

In the remainder of this article we demonstrate the effect domestic worker *relationships* can have on the way in which workers talk about problematic features of their relationships with their employers. We present five brief narratives in which domestic workers describe their relationships with their employers in an extremely positive way and use this to discount or minimise instances of discrimination that are reminiscent of apartheid-era practices (examples 1 and 2); and instances where their rights as workers were directly infringed (examples 3, 4 and 5). Research Masters students (2009 - 2010) under the supervision of the third author conducted interviews with 11 black female domestic workers (part of their course requirement.)

Narratives of Discrimination

Example 1

Thandeka is an older domestic worker, who has had years of domestic

⁹ Note on the authors' use of "paternalism": Paternalism serves the interests of privileged men and women by framing unequal or exploitative relationships as caring or protective, making them more difficult to resist. This is illustrated by domestic labour relations between 'maids' and 'madams' in South Africa (Ally 2008; Cock 1989; Sylvain 2001). While South African domestic labour relationships are typically between women, we would argue that "paternalistic" describes these relationships more accurately than "maternalistic" does. The institution of domestic labour supports a broader patriarchal framework where it is *women* who are responsible for the care of households. Domestic labour allows privileged women to 'buy out of' their domestic duties by employing less privileged women to do it for them (Cock 1989). While this labour relationship enables these more privileged women to compete with men in the labour market, ultimately it is women who largely remain responsible for the care of households, thus supporting the patriarchal status quo. Olive Schreiner describes this as 'female parasitism' (as cited in Cock 1989:11), and Cock (1989:1) as the 'oppression of women by women' (see also Ally 2010). Domestic labour in South Africa has often been referred to as paternalistic (Ally 2010; Cock 1989; Sylvain 2001) and hence we refer to this relationship as thus.

experience and specialises in the care of young infants. Thandeka portrayed herself as “spunky”, regaling the interviewer with humorous stories of her resistance to white employers who are portrayed as racist and discriminatory. In contrast, Thandeka presents her current employer of eight years as egalitarian and compassionate, describing her as ‘nice, she’s helping me, she’s same as my mother now’. Thandeka describes some of the ways her employer helps her:

they go to my home and see ‘what happened, what’s wrong?’ with my home and they help me. Uh, even my parents, even my- my family, check them. Even me, if I’m sick, I- he’ll-she’ll, they was a first person that I tell them I’m not well in my life and then they help me nicely. They give me the nice things to help me and now I’m feel comfortable, to my boss and my Madam.

Thandeka emphasises that her employers regularly return home from work to eat ‘my lunch... they eat what I’m cooking, phutu, rice, everything’, further emphasising the affectionate and non-discriminatory attitude of her employers towards her. However, she then reveals, problematically, that she waits for them to finish eating, cleans up after them, and then eats, which disrupts the portrayal of this equal relationship. The interviewer, on hearing this, asks Thandeka to explain this further (and by doing so, highlights that this information could be heard as problematic). Thandeka explains that,

We choose by s- our- ourself to- to take this time We’re changing by ourself because we see that it’s - it’s not n- nice time to eat the time they’re eating ... because there’s, already the boss is - is standing out and h - he’s going to work and we’re still sitting We just give the time to- to go out and then we’re sitting, how long, w- we like to sit. [Interviewer: Okay, *laughs*] We decide by ourself.

Thandeka thus presents herself as agentic, emphasising that it is her choice to not sit and eat with her employer.

Example 2

Like Thandeka, Mpumi has numerous years of experience working as a

domestic worker. She describes having worked in a number of places which she perceived as being exploitative or unpleasant. For example, the accommodation provided by her previous employer was 'cold, not (a) thing for people ... nothing inside', and she describes how the neighbour of this employer allowed her to sleep in 'her maid's room... to save me from the bad people, you see'. Through the intervention of this neighbour, Mpumi was found a new job with her current employer, Alice, and has worked for her for eleven years. Mpumi, in a similar way to Thandeka, portrays herself as a valued, appreciated member of the family, states that she views her employer as a 'sister'. Mpumi explains this to the interviewer:

I take Alice just like my, sister, you know? ... Because when you come in front of your sister ... And cry and say. Maybe I have got such problems like this and this. [Interviewer: Mm] Your sister will help you. But when you work to a person... and ask help. And then he doesn't or she doesn't help you... It's not nice you just say, 'I work because I am poor'.

This construction of the 'help' that Mpumi receives from Alice brings some kind of meaning or substance to their relationship, beyond working only 'because I am poor'. In return, Mpumi describes the loyalty, gratitude and affection she feels towards her 'madam', saying 'I always say ... maybe there can be fighting here, and then they [black people] say 'white people must go' ... I can take them and ... I will die with them at my house, because I know they have been good to me'.

Mpumi does a lot of discursive work to present Alice as being different to past apartheid-era employers, who typically treated their domestic workers as if 'this one has got lice ... this one have got some diseases'. However, she reveals to the interviewer that she and the 'gardener' use separate and inferior dishes when they eat. Mpumi provides justification for this by emphasising that it is *her choice* to eat from inferior dishes. She tells the interviewer that it is not Alice that says 'this is for you', but rather that it is Mpumi's choice to use a 'plastic plate' so that the 'gardener' does not feel that 'Mpumi use the better things' in comparison to him. In other words, Alice (theoretically) allows Mpumi to use 'a glass plate', but provides the 'gardener' with a 'plastic' dish. In order to manage her relationship with the 'gardener' Mpumi says she chooses to eat off of the same, saying she does so

to show ‘because I am like them I take so that they mustn’t worry’. She then emphasises that Alice has ‘got no apartheid this lady (.) has got not that heart She’s open for everybody’.

Both of these examples highlight instances which could be heard as problematic, due to their referencing of apartheid-era practices¹⁰. In both cases, however, the workers emphatically assert their role in creating these problematic instances. Rather than presenting their employers as discriminatory, Thandeka and Mpumi argue that it is their choice which creates these problematic instances, and as such, should not be viewed as problematic or discriminatory. In effect, this justificatory rhetoric around worker agency acts to discursively ‘argue away’ the problematic nature of these instances. While this ensures that the workers are not perceived as exploited, it transforms these instances from something that is discriminatory and a cause for concern, to something that it is unnecessary to resist.

Example 3

Nonku currently works for three different families, all of whom, she says, are very warm and welcoming and treat her as a valued member of the family. She presents herself as being happy to be a domestic worker despite the stigma associated with it, because she is ‘so free’, is ‘able to support (her) kids’ and is in a position where she can ‘learn a lot’. While Nonku also describes the physical ways she is cared for her by her employers (they ‘can give me what I don’t have with no problem’), she focuses more on the emotional care and respect she is shown by one of the families in particular (the Smiths) – for example, ‘she likes for us to come... and sit with her around the table and talk’; and ‘even during weekends they call and ask what we are doing and then they come to fetch us, go to their place for dinner’. The other families, Nonku states, also include her as a member of the family (while not to this level), but specifies that the Smiths, she ‘really enjoys’.

Nonku tells the interviewer that she is trusted completely in her employers’ homes, and is able to ‘go in every room’. However, Nonku then reveals that one of the families, the Johnsons, lock her indoors when they go out, and do not leave a key for her. This instance of being locked in, then,

¹⁰ That is, waiting on the family before eating their own food; being given inferior (and separate) dishes to eat off of.

could work against the utopian, egalitarian construction of her employers that dominate the rest of Nonku's interview. However, while Nonku tells the interviewer that 'at first it worried me', she subsequently dismisses the experience of being locked in through the repeated use of 'never'; for example, 'I'm *never* in any hurry', 'it's *never* occurred to me to ask her', 'I've *never* been upset with her for doing that' (e.a.). This dismisses any potential reading of the experience of being "locked in" as a form of discrimination. By minimising it and by justifying her employer's action through the suggestion that 'maybe someone stole from her', Nonku rationalises her employer's actions in a way which does not attribute blame to herself or her employer. This positions "being locked in" as justifiable and non-discriminatory. However, as with examples 1 and 2, if a discriminatory instance is not recognised as discriminatory, it cannot be resisted or negotiated.

Example 4

Rachel has worked for her current employers for thirteen years. Like the previous examples, Rachel described her employers in a very positive way: as treating her as a member of the family, and assisting her in various ways, such as putting her on their medical aid; driving her to the doctor; giving her unwanted household items; et cetera. In return, Rachel is expected to assist with the care of her employer's disabled adult son, in addition to her domestic responsibilities. This includes assisting her employer in putting the son to bed when the employer's husband is away from home, and requires Rachel to be "on standby" between 8 – 10pm at night. Earlier in the interview she described how she was not paid for this extra work: 'they didn't give me the money, that one I don't like... and I don't know why'. However, later in Rachel's interview this problematic "extra work" is reconstituted as a non-problematic "favour". Rachel tells the interviewer how her employer requests her "assistance":

when the people say 'please Rachel', you say 'alright well'. 'Ple-please help me'. Since by please, so I please them, because sometimes they please me a lot... they say 'please Rachel won't you come to help me'. So I'm coming to help. But I a-, they said 'no, Rachel, please could you please help me'.

In this part of the interview Rachel moves away from the earlier portrayal of limited agency ('they didn't give me the money ... and I don't know why'). She reframes herself through the repeated use of 'please', as being empowered and agentic, able to dispense help/favours to her employer. This agency is further emphasised through her control over *when* her assistance is given - 'at five o'clock, I'm going to my room, maybe I'm coming at nine o'clock to put them to the bed, it depends what time I want, sometimes half past nine sometimes ten, you see'. Immediately following this reframing of her agency, Rachel shares how she is normally paid for this assistance: 'sometime they give me Cane (laughs), you see, drink, sometimes they give 'O-oh Rachel, airtime', you see, they bought me airtime and things in the house'. In other words, (re)payment "in kind" is made informally, through the giving of items such as alcohol, air time, and household goods. This example illustrates how Rachel is drawn into a system of reciprocated favours, which is facilitated through the intimacy and gratitude she feels for their assistance ('so I please them because sometimes they please me a lot'). But by glossing Rachel's labour as "help" or "favours", instead of as overtime, Rachel is unable to negotiate payment for these hours. Instead she is paid "in kind" – with favours determined by the employer, such as alcohol or air time.

Example 5

Mpumi (discussed earlier in example 2) also gives an example of how she is drawn into a system of negotiated "favours". Mpumi describes how she is required to stay with her employer's children until the employers return home from work – sometimes until 7pm, which means she works up to 12 hour shifts on these days. Mpumi argues that 'I don't mind', despite feelings of frustration ('when I want to stop my job at a time and then they didn't stop their work. Oh, it's hard'). Mpumi tells the interviewer that when she feels 'it's hard', she tells herself:

I must remember. This people. As I take them as my brother and sister [Interviewer: Mm] They help me with my children. They pay for my children at school. They don't ask me anything. I take them, just like that. I must help them, as they help me.

In other words, Mpumi draws on the “gifts”, “favours” and assistance her employer provides her with to help her to dismiss feelings of frustration at her long working hours. The provision of these gifts is used to justify her resolve to ‘help them as they help me’. Mpumi adds, ‘This people help me. They don’t say ‘no’. [Interviewer: Mm] ‘It’s time up now’ (laughs) ‘we cannot help you’ [Interviewer: Oh ja] Help [Interviewer: Ja] Somebody. Who help you’. As with Rachel, Mpumi is drawn into a system of reciprocation, where she feels she is required to offer “help” over and above her normal duties, to recompense her employer for the “help” she receives from her.

Discussion and Conclusion

Legislation that has been developed in South Africa to protect the rights of domestic workers typically portrays workers as agents who are motivated to challenge exploitation while being in need of support as they do so. In this article we have argued that the limited success of this approach may also be attributed to the lack of motivation on the part of domestic workers to challenge exploitation and unfair treatment. In particular, the paternalistic nature of the domestic labour relationship undermines resistance to exploitation in a number of ways.

The paternalistic imperative to ‘help somebody who helps you’ draws workers into a system of reciprocated favours. This system glosses domestic labour relationships as equal and non-exploitative, and enables domestic workers to dismiss instances of exploitation as “help” offered in return for the employers’ paternalistic care. As such, the workers are not seen as victims (of exploitation) but as agents in an exchange economy.

Six of our eleven interviewees described their relationship in terms of mutual or reciprocated helping. As the narratives presented here show, the gloss of mutual assistance works to render exploitation as non-problematic and thus not a matter of undue concern or a cause for resistance. Hence paternalistic relationships – as much as the spectre of poverty, unemployment, lack of knowledge of their rights, weak organisational capacity, et cetera– can also undermine and act to constrain the ability of domestic workers to negotiate their labour rights.

Nonetheless, the idea of reciprocated exchange entrenches inequality. Although the exchange may be glossed as mutually beneficial, this conceals the fact that the “help” the domestic worker offers is often *required* in terms

of their working arrangement; while the “help” offered by the employer is often constituted as “extras” or “gifts”. Paternalistic care values the person of the domestic worker, but devalues the labour, for example, making an evening of after-hours work appear to have the value of an occasional shot of Cane.

Moreover, there is no legal requirement to provide these “gifts” to the domestic worker. S.D.7 states only that payment in kind, *where relevant*, should be included in the written contract along with their value. The construction of payments in kind as “gifts” and “extras” was common in the data set and works to negate any obligation to include them in the contract. Hence, there would be no recourse for the domestic worker should the provision of these “gifts” be revoked, as these “gifts” are, in terms of S.D.7, a private act of generosity, and not a right, despite forming a much-needed supplement for low wages. Therefore, while these narratives of mutual helping and paternalistic care gloss the relationship as equal, we argue that this discourse serves to shore up the inequalities between employer and worker, by maintaining the power differentials between them (Durrheim *et al.* under review).

Workers, then, are bound in a system of discrimination and affection, of exploitation and care. Paternalism provides a ‘sweet persuasion’ to accept one’s place in an unequal system (Jackman 1994:2). The problem is that these “supplements” or “gifts” occur outside of the formal labour relationship and cannot easily be regulated even though S.D.7 makes allowances for the disclosure of payments in ‘kind’. While paternalistic care may well concede a measure of humanity and dignity to workers (through feeling they are appreciated and loved) and salve the conscience of employers, it also undermines resistance and entrenches inequality. By dismissing instances of exploitation and providing “help” or “favours” for their employers, domestic workers maintain the harmony in an unequal relationship at the cost of their ability to resist or negotiate with employers.

This may partly account for the reason that the ostensibly progressive domestic labour legislation in South Africa (Ally, 2010; Fish, 2006; R.S.A. 2002) has not translated easily onto social justice in reality. Paternalism serves to reinforce hierarchy, devalue domestic labour and blunt motivation to resist. And yet, by adopting the rights based-approach, current policy provides no way of regulating this informal economy of favour and exchange which limit the ability of workers to negotiate their rights. As such,

paternalism serves to lock domestic workers into relationships that are strongly reminiscent of apartheid; while still allowing domestic workers to feel that they are a valued and respected “member of the family”.

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