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## **Domestic Workers, The Poverty Stricken Working Class: An Analysis of the International Labour Organization's Convention Number 189 (No.C189) in the Kenyan Context**

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### **Abstract**

*Domestic workers contribute substantially to the global economy, constituting 7.5 percent of women's total wage employment worldwide. Migrant domestic workers provide billions of dollars in remittances for their countries of origin. Domestic work is not only an important source of livelihood for workers, but also enables employers to better their standard of living by maintaining employment outside the home. Despite their important contributions, discrimination, gaps in legal protections, and the hidden nature of their work place domestic workers at risk of a wide range of abuses and labor exploitation. Around the globe, domestic workers endure excessive hours of work with no rest, non-payment of wages, forced confinement, physical and sexual abuse, forced labor, and trafficking. Children—who make up nearly 30 percent of domestic workers—and migrant domestic workers are often the most vulnerable. In many countries, domestic workers are excluded from national labor laws, leaving them no legal right to limits on their hours of work, a minimum wage, or adequate rest. This paper analyses the implications of the International Labour Organizations Convention on Domestic Workers, 2011, C189 in the Kenyan context in terms of legal and policy changes required in the established labour institutions in the country. It examines the existing employers/employee relationship to establish the impact of implementing the recommended changes. It also examines the employment agencies and finds them exploitative and in urgent need of regulation. The paper finds that Kenyans can implement ILO requirements within the*

current legal and institutional framework. However to be adequately effective, the domestic workers would need to receive proper training and form their own domestic workers' professional association which will lobby to be adequately represented in the most powerful institutions namely the National Labour Board and the Wages Councils.

**Key words:** Domestic Workers, Domestic Work, ILO Convention; Maid, Servant and Minimum Wages

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## INTRODUCTION

### 1.1 Background

The term domestic worker is broad and it includes cook, house servant, waiter, butler, children nurse, and valet footman or a personal attendant, chauffeur, bar attendant, gardener, washer and watchman (Cap 229, 1989). Romeo (1992) maintains that "domestic work is any domestic service or paid household work and a category of employment that includes both job workers who cleaned several different houses, live-in nannies and housekeepers".

The International Labour Organization (ILO) defines domestic work as work performed in or for a household or households while a domestic worker is defined as any person engaged in domestic work within an employment relationship (ILO, 2011). The work performed by domestic workers may include cleaning the house, cooking, washing and ironing cloths, taking care of children, or elderly or sick members of a family, gardening, guarding the house, driving for the family even taking care of household pets.

A domestic worker may work on full-time or part-time basis; may be employed by a single household or by multiple employers; may be residing in the household of the employer (live-in worker) or may be living in his or her own residence (live-out). However, ILO discourages the use of archaic terms such as "Maid" and "Servant" because they imply direct servitude (ILO, 2010:15). They could be employed through agencies, cleaning service and bureaus or by one-on-one encounter. For the purpose of this paper, the definition by ILO will be adopted and the term domestic service and household work will be taken to mean domestic work.

Domestic work is predominantly a feminine preserve. ILO (2010) estimated that 83% of domestic workers world wide were women and earlier reports had indicated that in Costa Rica 95.7% were women while in South Africa women accounted for 89.7% of all domestic workers. With the ongoing drive to employ women through gender mainstreaming and affirmative action in Kenya, the demand for quality domestic workers will rise. As Mattingly (2001 p 370-384) noted: "the growing numbers of professional women in developed countries contributes to the demand for domestic workers". This was because women have a natural or gender specific socialization that predisposed them to domestic work (Helma Lutz, 2002). Thus as the number of women joining employment outside their homes grow, so will the demand for good quality female domestic workers.

There are other reasons that favor the growth of quality domestic worker and hence attractive remunerations for them. The kinship arrangement where people lived in one compound and readily helped one another is long dead in Kenya. Even where there are remnants, the homesteads are composed of old people who can hardly care for themselves, let alone children of their children.

Modern parents, especially mothers are choosy as to who handles their child/children. Professional women with a helper who can multi task are very happy to compensate them. Another factor that favors domestic work is the general unemployment and the relatively poor terms of service given to those in other sectors.

A Permanent Public Service Remuneration Review Board report showed that the bulk of the women in the lower cadres of civil service earned less than KES 7,829 per month. (Kenya Today, 25/1/2011). By comparison, a domestic worker who earned as little as KES 4,522 (Ndulu, 2011) would fare better since she did not have travel, lunch and other expenses. Her take home income would comparatively be more. It is therefore reasonable to assume that domestic work as a sector of employment has a potential of absorbing many female jobs seekers if only the terms of service were made more attractive.

Even with the foregoing favourable factors, there is also the attitudinal challenge facing the sector. Majority of parents do not have domestic work as one of the careers their daughters can consider. It is considered as dirty, difficult and demeaning. Even when parents are forced by poverty to let their daughters take up domestic worker, it is usually through a relatively wealthy kin such as “helping uncle or auntie”. The kin is then expected to feed the girl and send her wages back home. In these circumstances the domestic worker becomes a source of income for her parents. She is actually exploited and enslaved by the very people whom she trusts most. She has no say on her terms of service and in most cases does not even know how much she earns.

## 1.2 Problem Statement

In its 100<sup>th</sup> conference held in Geneva on June 11-17, 2011 the International Labour Organization (ILO) passed the Domestic Workers Convention, 2011:C189, along with recommendations R201 which required domestic workers to be recognized as any other worker for the purposes of minimum wage considerations and any other conditions applicable to all workers. Since then member countries are engaged in debates which will culminate in domestication and ratification of the same before full implementation. In Kenya individuals, worker employer organizations, workers’ trade unions, Kenya development partners and other stake holders have expressed their opinions on the implications of the convention C189 locally.

This paper is an attempt to examine the convention requirements and recommendations in the Kenyan context. It follows and refers to a research done in Nairobi on vulnerability of female domestic workers in 2011. There are several areas that the convention fails to address and some that are complicated in the Kenyan context.

The Convention is silent about the care of children born out of wedlock whose mothers would wish to continue with school or join job seekers in urban centers. Whenever a school-going girl gets pregnant, chances of carrying the pregnancy to term and delivering the child are relatively high in Kenya. This is out of regard for the cultural, social and religious stigma associated with abortion. The girl’s parents are forced to adopt the child to enable their daughter to continue with education. Where the grandparents are unable due to poverty, or other reasons the young mother has to fend for herself and her child. Since she has no marketable skills she will be forced to accept any employment that can cater for her most basic needs.

Whether they find work as domestic workers, barmaids, hotel waiters or even sex workers, the money they earn is normally not enough for her needs and those of the child or children. Forced by the desire to protect her child or children from urban vulgarizes, the young mother inevitably takes the child back to the grandparents accompanied by a house help who has accepted to receive a wage which is much less than the minimum wage. So the issue one has to deal with here is whether the convention requirement is applicable in these circumstances.

Care of children of divorced or separated mothers requires attention as well in view of the convention requirements. In Kenya “come we stay” unions which have no strong legal basis are very common. These unions are notorious in urban areas. When they go sour, the mother is usually left with the burden of fending for the children without any support from the father. In most cases the mother would have been housewives who had no economic skills. Now she has to support herself and her children. Where parents are agreeable, the children are

taken back to the rural areas where the cost of living is low. An arrangement, where the mother support the grandparents along with the grand children is worked out.

Thus it is not unusual to find rural homes with several sets of children where some or all the daughters have separated or had children out of wedlock, all being reared by aging but happy grannies. All the children are cared for equally by the grandparents irrespective of whether some of the mothers contribute for their upkeep or not. The grandparents also benefit because in the process they are cared for and with time their physical burdens reduce as older children do most of the chores leaving the grandparents to perform supervisory roles.

In these circumstances, one cannot talk of the grandparents as domestic workers to be rewarded with wages in terms of the Domestic Workers' Convention. Thus it is important to take such situations in to considerations when passing laws on decent work for domestic workers.

Another dilemma that invites a solution is care for the children of domestic workers and other minimum wage earners. Given the state of economy in Kenya, the majority of those in informal sectors and casual workers will be earning minimum wages. Though there are universally agreed factors in determining minimum wages, the interpretations are highly country-contextualized. The Convention (article 11) merely mentions minimum wage coverage where such exists. However for the purpose of this paper, minimum wage will be taken to mean the wage stipulated by the Ministry of Labour and Human Resource Development which according to the rates released in May 2011 for general laborers including cleaners, supervisors, gardeners, children' ayah, house servant, day watchman and messenger was set at KES 7,586 (KES 12,927 in 2018)) per month for Nairobi, Mombasa and Kisumu (GOK, 2007). Since it is not possible to stop reproduction, the above minimum wage earners must find ways of caring for their children.

Kenya has many orphaned and vulnerable children. Their care is principally entrusted with the community, more specifically aged grandparents. Whether these grandparents can be considered domestic workers for purposes of compensation is an issue that needs to be addressed.

Other issues not specifically addressed by the Convention include the need to de-link remuneration of domestic workers from academic qualifications; how social protection can be made all-inclusive to cover the scenarios described above, and how the domestic workers can effectively be entrenched into the existing institutional frameworks.

### **1.3 Purpose and Objectives**

The purpose of this paper is to examine how relevant and implementable ILO Convention, 2011, C: 189 and its recommendation R201 were in the Kenyan context. The specific objectives are:

1. To examine broadly how Kenyans need to address themselves to the requirements of the convention in view of the negativity of domestic work as a career
2. To examine the impact adopting the convention will have on the domestic worker-employee relationship.
3. To assess to what extend the existing Kenyan laws are incongruence with the convention requirements.
4. To assess the role the domestic workers can play in alleviating their situation.

### **1.4 Materials and Methods**

This study relies basically on secondary data gleaned from the International Labour Organization (ILO) Domestic Workers Convention, 2011:C189, along with its recommendations dubbed R201; The Regulation of Wages and Conditions of Employment Act (*Cap. 229*); Labour Institutions Act *Cap 234* and Labour Relations Act, *Cap 207*

of the laws of Kenya as well as materials from the author's research and survey on domestic workers in Nairobi County.

## **2.0 Analysis of the Domestic Workers' Convention in the Kenyan Context**

Arising from the convention requirements, those households who cannot genuinely afford the conditions set out for domestic workers are faced with a challenge and may consider some alternatives which are beyond the scope of this paper. The convention explains that the employer of a domestic worker may be a member of the household, for which the work is performed, or an agency or enterprise that employs domestic workers and makes them available to households.

In rural Kenya and also in most urban settings, employment of domestic workers is through word of mouth where word about existence of a vacancy is passed around close friends. Some of these friendships would be kinship based, religious affiliations and office or workmate connections. Thus in an attempt to domesticate the convention, Kenyans are faced with a dilemma which necessitates some analysis.

### **2.1 Specific Issues to Be Addressed**

The analysis addresses articles 2, 13, 14 and 15 of the convention which require that governments consult with both employer and workers organization to address specifically the following issues: identity of categories of workers who would be excluded from the scope of the convention, required measures on occupational safety and health, measures on social security protection and measures to protect workers from abusive practices by private employment agencies.

#### **2.1.1 Article 2: The Challenge of Categorization**

Part 3 of Article 2 specifies that:

*“Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.”*

In Kenya, employers are represented by the federation of Kenya Employers (FKE). Employers of domestic workers as individuals are not covered by FKE. Thus technically all domestic workers' employers are not covered by the convention. On the other hand domestic workers come under the umbrella trade union known as Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA). While KUDHEIHA can rightfully represent domestic workers, FKE cannot represent the views of domestic workers' employers. Hence tripartite discussions in the terms required by the convention will remain at a general level to the detriment of the domestic work profession.

#### **2.1.2 Article 13: Occupational Safety and Health**

Article 13 requires that:

*“Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative*

*organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.”*

Cases have been reported in Kenya where workers have lost their lives, maimed and others acquired chronic illnesses due to work related hazards. Some of these have involved machinery and equipment and others have been due to gas and fumes. Hence implementation of article 13 and recommendation 201(19)(a) which calls for protection of domestic workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and risks, in order to prevent injuries, diseases and deaths and promote occupational safety and health in the household workplace is long overdue. This can be achieved by complying with sub clause (19)(e) which calls for developing training programs and disseminating guidelines on occupational safety and health requirements.

This call is a departure from the practice so far adopted by Kenyan health officers who notoriously raid work places with the sole purpose of what has been misconstrued, for good reasons as harassment of workers and proprietors, most of who have no knowledge of occupational and safety healthy environments due to lack of training. Much will be achieved by visiting to offer appropriate training rather than punishing offenders who may be ignorant or unable to access the required training in keeping with the convention requirement.

Another often abused aspect of occupational safety concerns food quality and food preferences. It is recommended that employers consider the domestic worker holistically having regard for their cultural and religious backgrounds and provide foods that will leave them dignified. This is the essence of recommendation 201 (17) (d) which mentions meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.

### **2.1.3 Article 14: Social security protection**

Article 14 requires that:

*“Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.”*

In their paper on “social protection status in developing countries-the case of Kenya”, Mbithi and Mutuku (2010) define social protection as the policies and programmes designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people’s exposure to risks, and enhancing their capacity to protect themselves against hazards and interruptions /loss of income. Kenya has a National Social Protection Policy document (GoK, 2006).

The programmes covered are: Labour markets policies, Social insurance policies, Social assistance policies, Micro and area based programme and Child programmes. Under social insurance policies fall NSSF, NHIF and Occupational pension Scheme. Hospital fee waiver and Community and family safety nets are part of the Social assistance policies. It is clear that Kenyan laws have the framework for social security protection.

In May 2011 a motion was passed in parliament extending a financial safety net of KES 2000 to every needy Kenyan aged not less than sixty years (Hansard, 2011, p 49.). Whether such will be extended to domestic workers is another matter. The domestic workers will need to push for it as discussed under domestic workers’ association.

Related to social security protection, article 17 requires establishment of effective and acceptable complaint mechanisms. It calls for development of measures for labour inspection and enforcement of penalties. Once developed, the measures are expected to specify the conditions under which access to private household premises will be granted. In Kenya, local administrative offices have in their establishments positions of professional social workers. Part of their job is to receive public complaints and facilitate investigations. However social workers have tended to be concerned with child related issues, while adult issues that do not touch on children are left to be handled by the administrative wing which consists of district officer and administrative police. Domestic workers shy away from approaching the administration officers for several reasons. If they don't have national identification documents, they risk being arrested. A visit by police to any household in Kenya is received badly and may lead to loss of a job on the part of the domestic worker. Thus there is a need for paradigm shift in this regard.

Social workers who are professionally trained are most suited to implement measures for labour inspection and enforcement of penalties with the help of health and administrative government officers. The government may therefore need to deploy more social workers to the local administrative offices.

#### **2.1.4 Private Employment Agencies**

Article 15 requires that domestic workers be protected from abusive practices by private employment agencies. One of the challenges faced in an effort to offer protection is identifying and vetting bonafide agencies. In Kenya domestic work employment agencies are commonly known as employment bureaus. They are present in every major estate in urban centers and there is legislation for them to be registered with the Ministry of Labour as provided for in Part VII (55(1) (a) of the Labour Employment Act Cap 234 of 2014, under Registration of employment agencies..

While it is allowable for agencies to recruit and place domestic workers, the governments have obligations to regulate them. Of particular concern is the need to protect domestic workers from fraudulent exploitations and abuse. Measures to ensure that fees charged by private agencies are not deducted from the remuneration of domestic worker should be taken. The situation in major urban centers in Kenya is the complete opposite of the guidelines envisaged in the article.

Employment agencies are reportedly cashing in on house girls (The standard, September 15, 2011). Most of the proprietors who operate from make shift sheds (Vibandas), estate corridors, city backstreets and barbershops are not registered with the Ministry of Labour and Human Resource Development nor are they recognized by KUDHEIHA. They boast of earning anywhere between KES 43,000 to KES 75,000 per month from both the domestic workers and their employers. This is through a 10 to 20 per cent monthly fees deducted from the workers' wages which are less than can support a decent living. The situation is even worse concerning domestic workers who work in foreign countries. Bilateral, regional and multilateral agreements to prevent abuses and fraudulent practices are also addressed in article 15.

The issue was addressed by the Government of Kenya in August 2006 where a report on Export of Kenyan Labour with a one hundred day plan of implementation was prepared. However cases of abuse of Kenyan domestic workers abroad did not stopped as demonstrated by a Daily Nation report titled: "Curse of the Arabian Dream" (Daily Nation July 20, 2011) where "recruiting agents said their mandate ended when they deliver the youth to their employers in the gulf.

The report narrated the case of a Kenyan female who had been promised a well-paying job as a house help, only to end up cleaning scores of residential houses in the block and cooking for her employer's family of six having

powdered milk as her only meal with only five hours of sleep. After a couple of weeks she could not bear it anymore and approached her agent seeking to return home. But she was told she had to work for six months or pay the agent KES 130,000 as refund for the cost of transporting her to Saudi Arabia.

Through the help of Muslim for Human Rights Organization (Muhuri), she was flown back home on June 1, 2011 after a 26-day stay in slavery.” Muhuri concluded by saying “it was sad that the Kenyan embassy in Saudi Arabia had turned a blind eye to such occurrence as more and more Kenyans travel to their enslavement and labeled the agents as “human traffickers” and called for the government to act.

The above notwithstanding, a Daily Nation Newspaper of July 20, 2011 reported that private domestic workers’ bureaus or agencies are well established in major cities and municipalities in Kenya. For the purposes of Convention 189, these agencies can be the first stop to collect useful data and organize the domestic workers in order to facilitate tripartite collective bargaining (section 57 of the Labour Act, cap 234, on duties of employment agencies).

## **2.2 Freedom of Association and Domestic Workers’ Representation**

Freedom of association is dealt with in article 3(2) of the Convention C189 of 2011. Given the private nature of their work stations, domestic workers do not have conducive environment to organize themselves. To ensure implementation of all the terms contained in the convention, the umbrella union, KUDHEIHA, is actively involved in both recruitment and awareness raising campaigns. However domestic workers need more than a union. They need to be informed on a wider scope, thus raising them from a magic level where their lives are fully dependent on their employers and presumed will of the deities to a critical level where they can begin to interrogate their issues (Freire, 1968).

This is well captured in sub-clause 21(1) (f) of recommendation R201 as follows: “providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require”.

To ensure that all the issues of domestic workers in Kenya are comprehensively addressed, a domestic workers professional association is needed. An association has a larger mandate. Collins English Dictionary defines a professional association as a body of persons engaged in the same profession, formed usually to control entry into the profession, maintain standards, and represent the profession in discussions with other bodies. In legal terms, a professional association is a term used to describe a business that serves a single profession and requires a significant amount of education, training, or experience or a license or certificate from a state or private authority to practice the profession. It is an organization whose members belong to a particular profession that sets requirements for entry into and maintaining membership in that profession.

Having a professional association will ensure that domestic workers will be well trained and disciplined to warrant their being compensated competitively like any other profession. This approach will take the interests of employers into consideration and encourage them to reward domestic workers justly.

It is through forming their own professional body that domestic workers in Kenya can influence policy. The Kenya Labour employment and institutional framework has well established structures and positions, some of which if they were occupied by representatives of domestic workers many positive changes can be realized. Two of these are discussed, namely the National Labour Board and the Wages Council.

### **2.2.1 The National Labour Board (Labour Institutions Act 207: Part II)**

The National Labour Board is composed of a Chair person who should be an expert in labour relations matters, General Secretary (COTU), Chief executive (FKE), two nominees of FKE, two nominees of COTU, a maximum of two independent members, Director of employment, Director of micro and small enterprise development, Director of occupational safety and health services, Director of industrial training, Registrar of Industrial Court, Registrar of trade unions and the Commission of Labour who is the board's secretary,

It is clear that the board is wide and general in its composition such that without a precise input from a professional body, it is unlikely to exhaustively address the issues of domestic workers. Hence a professional body of the domestic workers would make a better impact in articulating the concerns of its members to the national labour board.

The functions of the National Labour Board as outlined in section 7 (1) of the Act include advising the Minister on: (a) all matters concerning employment and labour; (b) legislation affecting employment and labour; (c) any matter relating to labour relations and the Labour Relations Act, 2007 and trade unionism; (d) any issue arising from the International Labour Organisation and the International Labour Organisation Conventions; (e) codes of good practice; (f) any issue raised by an international or regional association of states of which Kenya is a member; (g) systems of labour inspection and the administration of the labour laws; (h) any aspect of public employment services, vocational guidance, vocational training and the employment of persons with disabilities; (i) the formation and development of policies designed to promote the granting of paid educational leave to workers for the purposes of training, trade union social and civic education and trade union education; (j) the general state of employment, training and manpower development in the country.

Sub section 7 (3) gives the board a leeway to carry out any investigation as it may consider necessary and also research into labour, economic and social policy and in so doing it may co-opt any person to participate in its deliberations according to sub section 7 (4). This allows for existence of a research wing which with the help of professional domestic workers' association should help the Ministry of Labour and Human Resource Development to come up with ways to entrench domestic work as a recognized sector of employment enjoying all the benefits available to other workers. Also domestic workers professional association can lobby for its members to sit on the board and push for the domestic workers' welfare.

### **2.2.2 The General Wages Council**

Two wage councils are provided for in The Regulation of Wages And Conditions of Employment Act, Cap 229, namely (a) a general wages council; and (b) an agricultural wages council. Sub section (2) gives the Minister powers to establish a sectoral wages council if the Minister is of the opinion that: (a) the remuneration and other conditions of employment of any category of employees in any sector is not adequately regulated by collective agreements; (b) it may be expedient to set minimum wages and other conditions of employment in respect of employees in those sectors.

According to section 44, the functions of the wages council include:

- (a) investigate the remuneration and conditions of employment in any sector;
- (b) invite and consider written and oral representations from interested parties;
- (c) make recommendations to the Minister on minimum wage remuneration and conditions of employment. In discharging the above mandates, subsection

Sub section (3) allows the wages council to:(a) question any person who may be able to provide information relevant to the investigation; (b) in writing, require any person to provide any information, book, document or object relevant to the investigation; or (c) conduct public hearings.

In the performance of its functions a wages council takes into consideration

(a) the needs of employees and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment and the need to encourage investment; (c) the ability of employers to carry on their business successfully;(d) the operation of small, medium and micro enterprises; (e) the cost of living; (f) the alleviation of poverty; (g) the minimum subsistence level; (h) the likely impact of any proposed conditions of employment on current employment or the creation of employment; and (i) any other relevant factor.

The wages council membership include a Chairperson who must have knowledge and experience in the determination of minimum terms and conditions of employment, a maximum of three trade union representatives, a maximum of three employers representatives, a maximum of three independent members.

A domestic workers professional association will make it possible to have their representation in the wages' council and thus ensure that enough views are collected from its members in order to influence better terms for its members.

The idea of professional or "domestic workers'-only association" is not without precedence in developing countries. SUMAPI is a national organization of domestic workers in the Philippines. Aided by the Visayam Forum Foundation Inc. (VP); SUMAPI has reached out to 18,000 domestic workers in parks, schools, churches and villages. It provides counseling services and links domestic workers to access social services, educational assistance and other services provided by other social partners. It serves as the voice of domestic workers in local, national and international lobbying and advocacy initiatives. SUMAPI can provide the requisite information towards a strong Kenyan domestic workers professional association to champion the issues of its members.

### **2. 3 Employer/Employee Complementarity and Symbiotic Relationship**

In awareness-raising, the employers are not left out. They should be made aware of their obligation with regard to good practices toward the employment of domestic workers {(Recommendation 201, 21(d)}. It is recommended that member countries should ensure promotion and realization of the fundamental principles and rights at work, which include taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining.

They also ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training. These recommendations confirm the complimentary and the symbiotic relationship that should exist between domestic worker employers and their employees (Mattingly, (2001).

Indeed, Mattingly (2001) observed that "domestic work is a complementary arrangement between working mothers which if properly structured could support reasonably healthy livelihoods". Thus it is vital that both Kenyan employers and the domestic workers be made aware of their obligations in the symbiotic relationship they find themselves in.

## 2.4 Training of Domestic Workers in Kenya

Concerning training of domestic workers, the Kenyan Government is advantaged in the sense that a syllabus developed by the authoritative Kenya Institute of Education (GoK, 2006) is in place. Furthermore, tertiary and higher colleges exist to implement such a syllabus. These include Technical university of Kenya and Utalii Colleges. Besides other privately owned homecare management institutes such as the Institute of Homecare Management of East Africa located at Githurai, Nairobi are available.

The challenge would be how the workers would find time to attend and who will sponsor them. As for sponsorship, the worker as the ultimate beneficiary will have to arrange. However it has been observed that there are philanthropic employers who are willing to assist as shown in the following case. Rose (Daily Nation, July 6, 2011) was a primary school dropout, who was employed by Juliet at an initial wage of Kshs 4,000 per month. Juliet sponsored her for a dress making course at a tuition cost of KES 12,000 per year. As she did all this, Rose enrolled in a secondary school and was planning to sit her secondary school examinations in December 2011.

However training of domestic workers should not be an after thought as it is at present. Since the domestic work sector has a potential to grow to be an important sector of employment, the Kenyan educational system should encourage it as a destination carrier. It should be entrenched into the National Education Curriculum.

This can be done by expanding, improving and strengthening the teaching of home sciences in primary and secondary schools. Indeed domestic work cuts across all disciplines. It's both physical and social science based. A domestic worker need applied knowledge in dealing with people who may not be from their cultures which calls for competences in some aspect of sociology and psychology.

They need communication skills, calling for language and literary mastery. They must be competent in operation of equipment such as cookers, cylinders, microwaves and washing machines which are related to physics. Basic biology will help them in nutrition and hygiene as chemistry will enlighten them on harmful chemicals such as found in some detergents. Thus broad based curriculum that meets the specific needs of those who will be inclined to be domestic worker may need to be developed and taught at secondary school level.

This will equip those who for some reason will not be able to enter vocational and tertiary institutes and colleges. It will also have created sufficient interest for some to choose to specialize more at certificate level, vocational level or advance to diploma level. It will also give a basis for wages council and other bodies to decide on relevant scales for remunerating the various categories of domestic workers. Above all it will give an employer a reason to pay them sufficiently and thus meet the requirements of the ILO Convention.

## 2.5 Decent Living Conditions and Privacy

According to article 6 of the convention, decent working conditions include decent living conditions which respect the privacy of the domestic workers. Fulfillment of this provision can be a challenge to the Kenyan employers including those in the middle social class. This is because housing is relatively expensive taking between 30-50% and in some cases a greater percentage of a worker's salary and many houses do not have servant's quarters. Even where servant's quarters exist among government and its corporation's officials, they will be occupied by members of their extended family or grown up children.

Thus just like siblings share bedrooms and other amenities, domestic workers are expected to share facilities with one or two of the family members. Usually the shared facility in a middle class estate would be far much better than what a house allowance of 15% would provide. A study carried among domestic workers in Nairobi estate of Lang'ata, Woodley, Dandora, Embakasi, Nairobi West and Otiende showed that 70% lived with their employers'

residences yet their kin's homes were in Kibera (Ndulu, 2018). Based on the then contested current minimum wage of KES 7,586 (KES 12,927 in 2018), a 15% housing allowance was KES 1,138 (KES1, 939, 2018) which was far too little to afford a mud-walled and tin-roofed room in an informal settlement.

The remaining 30% who lived in their houses shared a single room with their spouses and children besides sharing external sanitary facilities with the rest of the community. Olima (2001) showed that in Nairobi one room was occupied by between 3-6 persons in 1995. A report attributed to Family Community Based Organization Kenya said that there was an average of 8 people per household in Jericho, one of the oldest estates in Nairobi. It was therefore prudent to take the issue of privacy in the context of what employers can provide after weighing all the options or alternates available.

It should also be born in mind that in traditional Kenya, girls were never provided with their own private living quarters. They either shared with their sisters or their mothers. This afforded them protection and it was also in keeping with the expectation that they will move out to their husbands' home and start their own households. This lack of privacy in terms of a separate room would not be a serious violation of their rights and insisting on it would be seen by their employers as an unnecessary and expensive imposition of western culture.

## 2.6 Minimum Wages

Let's consider Minimum Wages briefly as required in article 11 of the convention. Reacting to the declaration by the Labour Minister to raise the minimum wages to KES 7,586.00 in 2011 (KES 12,927.00 in 2018) per month, Dr. Mailu, Chairman of FKE invoked the current wage guidelines in Kenya published in November 2005. According to the guidelines, "desire to accord workers a just minimum standard of living, changes in the cost of living, realized productivity gains, and the ability of the economy and employers to sustain the increased labour costs are key compensation parameters.

The Merriam-Webster dictionary, defines minimum wage, also known as living wage as the lowest wage paid or permitted to be paid, specifically a wage fixed by a legal authority. There is agreement among many scholars on factors to be considered when fixing minimum wages. Flores and Bent (1980) talk of the "Family Food Basket", an expression frequently used by government agencies (Ministries of Economics, Agriculture and Statistical Offices), as the basis for the establishment of minimum wages for the different socioeconomic groups.

It is necessary, therefore, to determine the quantities of different foods that should be included as part of the diets so as to cover the nutritional requirements of the population, they recommend. Robert, et al (1974) talked of six-point criteria, namely the needs of the worker and his/her family, the general level of hygiene, the cost of living and changes therein, social security benefits, the relative living standards of other social groups and economic factors including economic developments, levels of productivity and the level of employment and the capacity to pay. They add that the objective of minimum wage fixing is to give wage earners the necessary social protection in terms of minimum permissible levels of wages.

The time unbeaten –three-criteria for minimum wage recommended by Pierson, (1940) are: the minimum necessary for health, the value of service rendered and the rates prevailing for work of comparable character. Other scholars concur that the factors to be considered in wage determination include job content, job value, employer ability to pay, employee acceptance, outside wages, market rates (demand for labour), Legislative influences (e.g. legislation on minimum Wage) and union spill over (non-unionizable beneficiaries).

Looking closely at the above definition and criterion, domestic workers and indeed all workers deserve more than what the Kenyan Government stipulated in 2011, namely KES 7,586.00 (KES 12,927.00 in 2018) per month. A

living wage that is the minimum necessary for health, based on the family food basket and using a survey carried out in September, 2011 (Ndulu, 2011) should have been, for a Nairobi dweller KES 17,240/=. Since then fuel costs have risen severally and obviously prices of essential commodities as well. Should the minimum wage be fairly determined based on the value of services rendered, it would then mean that domestic workers would charge for at least five tasks that they perform on a given day. These are cooking, laundry service, cleaning services, baby care and escort services.

In some well-to-do households, different workers are engaged to discharge these duties and their take-home pay amount to KES 500 per person and therefore the daily expenditure on such an employer would be KES 2,500. Taking a hypothetical case where such services are required three days in a week, the weekly expenditure would be KES 7,500/= and the monthly cost of domestic services would be KES 30,000. This is the kind of wages earned by teachers who spend a whole day with our children, just as domestic workers do. It would then be the minimum wage according to Pierson's second and third criteria.

Thus in addressing the issue of minimum wages for domestic workers, quantifying their work in the conventional methods may not yield fair assessment. The wages councils that do not have fair representation of the domestic workers are thus faced with a dilemma which requires mechanisms to resolve. A domestic workers' professional association may hold the key.

### **3.0 Conclusion**

Kenya has the necessary framework to implement the convention requirement but lacks proper representatives in the two most powerful institutions, namely the National Labour Board and Wages Councils. It is difficult to categorize employers of Kenyan domestic workers in order to assess their ability to meet the demands of the convention. This is because they range from the very poor represented by girls who got children out of wedlock to the working professional women.

Also to warrant the recommended conditions, the domestic workers themselves will have to make domestic work their career of choice. They will need to read and train for it in all levels of education in Kenya also form a professional body to regulate their professional conduct.

The criteria for determining minimum wages take many factors into consideration. There seems to be agreement among the various proponents that the need of the worker's family, cost of living and value of the service rendered are key considerations. In Kenya, these three factors have not been adequately addressed. To be fully compliant with ILO's convention and indeed to achieve vision 2030 on "social justice for all" and the sustainable development goals numbers 1 and 5 respectively, namely: "end poverty in all its forms everywhere and achieve gender equality and empower all women and girls", the so called minimum wages should be reviewed.

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