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The introduction of a minimum wage for domestic workers in South Africa

Debbie Budlender

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Inclusive Labour Markets, Labour Relations
and Working Conditions Branch

***The introduction of a minimum wage for
domestic workers in South Africa***

Debbie Budlender

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Acronyms and abbreviations

ANC	African National Congress
BCEA	Basic Conditions of Employment Act
BUSA	Business Unity South Africa
CCMA	Commission for Conciliation, Mediation and Arbitration
CGE	Commission for Gender Equality
COSATU	Congress of South African Trade Unions
DPRU	Development Policy Research Unit
ILO	International Labour Organization
LRA	Labour Relations Act
NEDLAC	National Economic Development and Labour Council
SADSAWU	South African Domestic Service and Allied Workers Union
SADWU	South African Domestic Workers Union
UIF	Unemployment Insurance Fund

Introduction

In South Africa, the minimum wage for domestic workers was one of a large range of reforms that were undertaken in the years following the transition from Apartheid to democracy in 1994. The minimum wage was also only one element of the reforms introduced for domestic workers specifically. The paper therefore starts with a brief discussion of the overall socio-political background and developments, including the developments in terms of labour legislation. It also discusses in somewhat more detail the other reforms for domestic workers beyond that of the minimum wage.

The minimum wage was introduced in 2002, more than a decade ago. From the outset, there was acknowledgement that introduction of a minimum wage was not enough, and that enforcement would pose particular challenges in this sector. The paper therefore includes discussion as to what has happened since 2002 both in respect of implementation of the minimum wage, and in respect of addressing other aspects of domestic work.

As a guide to the reader, Table 1 provides some of the important milestones in the setting of the first minimum wage for domestic workers in South Africa.

Table 1. Timeline for establishment of first minimum wage for domestic workers in South Africa

Date	Event
1993	Basic Conditions of Employment amended to cover domestic workers
1994	First democratic elections in South Africa
1995	Labour Relations Act amended to cover domestic workers
1999	Setting of minimum wage for domestic workers included in Minister of Labour's Five-Year Plan
1999	Government gazette issued establishing terms of reference for domestic worker investigation
1999-2001	Public hearings and commissioned research to inform sectoral determination
2001	Government gazette issued with consultative document on proposed wages and conditions of work
2001	Unemployment Insurance Fund legislation amended to cover domestic workers
2002	Employment Conditions Commission advises Minister on minimum wages and conditions of work
2002	Minister approves Sectoral Determination 7, which comes into effect
2002	Unemployment Insurance Fund coverage comes into effect for domestic workers

1. Background: Setting the scene

1.1. South Africa in the 1990s and early 2000s

As noted above, the introduction of a minimum wage for domestic workers in South Africa must be understood against the background of the enormous political changes that were occurring at the time. The process of setting a minimum wage began seriously in 1999, five years after the first democratic elections which saw the end of the Apartheid era. The minimum wage came into effect towards the end of 2002, a little more than eight years after the first democratic election.

The elections of 1994 saw the National Party government of the Apartheid era replaced by a Government of National Unity in which the African National Congress (ANC) was the clearly dominant party, having won well over half the votes. The ANC campaigned for the elections as part of an alliance that included – and continues to include – the South African Communist Party and the Congress of South African Trade Unions (COSATU). COSATU was an extremely important force in the overthrow of apartheid, and retained much power and influence into the 1990s. At the time of the elections, the South Africa Domestic Workers' Union (SADWU) was one of COSATU's affiliates although, as seen below, the union dissolved several years later. In the run-up to the 1994 elections, the introduction of a minimum wage for domestic workers featured in the ANC's election manifesto.

The political change symbolized by the 1994 elections began in earnest several years before that date. In 1990, the then president of the country announced the unbanning of the ANC and other leading political parties and organisations that had been banned since the 1960s. In 1991, the iconic Nelson Mandela – who subsequently was elected the first President of the “new” South Africa – was released alongside other key struggle leaders.

For domestic and other workers and citizens, the period saw the abandonment of a range of legislative restrictions. In respect of domestic workers in particular, during the Apartheid years, employers were required to register all domestic workers with the Bantu Affairs Administration Boards found in all “white” urban areas so as to obtain a “pass” for the worker. In 1986 the influx control laws that underpinned the pass system were abolished.

The early 1990s saw important developments on the labour legislation front. The Laboria Minute of 1990 recorded agreement that government would submit all planned changes to labour legislation to employer bodies and union federations before tabling them in parliament (Kuye & Cedras, 2011). In some senses this agreement was a forerunner to the later establishment of the National Economic Development and Labour Council (NEDLAC) as the foremost social dialogue mechanism in the country.

In 1993, the Basic Conditions of Employment Act (BCEA) of 1983 was amended so as to extend coverage to domestic and farm workers. Both “domestic servants” and farm workers had previously been excluded from the scope of the BCEA. This was the first important step in recognising domestic workers as workers with rights – in Ally's (2010) words, a change from “servant” to “worker”. As discussed further below, such recognition had been a demand of both domestic workers and organised workers more broadly for some time.

The amendment provided for some differences in conditions of domestic and farm workers when compared to other workers. For example, the maximum spread-over¹ for farm workers and live-in domestic workers was set at 14 hours rather than 12 hours; extension of ordinary working hours per day for a period of up to 26 (calendar) days was allowed for domestic and farm workers if these increases

¹ The time from when a worker starts work on a day and ends work, including time off for breaks.

were off-set by reduced hours at other points within a 12-month period; and maximum weekly overtime for domestic workers caring for children and elderly, sick, frail and/or disabled people was set at 14 hours rather than 10 hours. Florrie de Villiers, a senior office-bearer of the South African Domestic Workers' Union (SADWU), was a member of the task team that drafted the amendments to labour legislation.

After 1994 there were further substantial political and legal changes. The Labour Relations Act (LRA) was extended to cover domestic workers in November 1995. While the BCEA provides protection in respect of conditions of work, the LRA provides for organisational rights and mechanisms for dispute resolution. The extension of the LRA to domestic workers was, however, subject to some restrictions in rights, namely trade union officials and office-bearers did not have the right to enter the employer's home unless the employer agreed, and the right to disclosure of information (section 16) did not apply.

The LRA and BCEA then underwent further substantial amendments – in 1997 and 1998 respectively. These two laws confirmed that domestic workers were workers with rights, and extended the rights available to them. The BCEA, in particular, is the law under which the minimum wage was subsequently introduced. The LRA was especially important for domestic workers in providing for the establishment of the Commission for Conciliation, Mediation and Arbitration (CCMA). This is a body that is independent of the Department of Labour, as well as political parties, trade unions or business. However, the governing body includes three government representatives, and three representatives of organised labour and organised business. As discussed further below, the CCMA has become an important source of support for domestic workers, in particular in relation to dismissals.

A further important element of the transition to democracy was the emphasis given to gender equality in the new “non-racist, non-sexist South Africa”. The early attention to the issue of the largely female domestic workers happened alongside a range of other interventions that attempted to promote gender equality and address women's needs – and in particular to consider the needs of poorer, black women. Ally (2010) observes that the introduction of the child support grant in 1998, and its subsequent improvement and extension in terms of the ages of children covered and higher means test, was of particular importance for domestic workers, as it supplemented the wages of those with children. By 2003, primary caregivers (mainly mothers) of 2.6 million children received the grant (Ally, 2010: 139). By March 2013, the number had expanded to 11.4 million (National Treasury, 2013: 433).

1.2. Wage setting mechanisms in South Africa

There are several ways in which minimum wages can be determined in South Africa. Three of these ways result in minimum wages being published in a government gazette. The first way is by means of bargaining council agreements, the second by means of statutory council agreements, and the third by means of sectoral determinations. Domestic worker wages are set through sectoral determinations.

Bargaining and statutory councils are provided for in the Labour Relations Act and are formally registered under this Act. The councils are made up of bodies representing organised labour and business who bargain over wages and other conditions of employment. Bargaining councils can only be registered where the union and employer bodies are considered “sufficiently” representative of the employees concerned. In August 2013 there were 41 bargaining councils in the private sector alongside the South African Local Government Bargaining Council and the Public Sector Central Bargaining Council and its sub-councils. Statutory councils – of which there are very few – can be registered if the organisations representing either labour or employers accounts for at least 30 per cent of the sector. The Minister of Labour may extend agreements reached in both types of council to cover the full sector, including employers and workers who are not party to the council.

Sectoral determinations are issued in terms of the Basic Conditions of Employment Act. The Act prescribes minimum conditions of work that cover all employees, but does not set a minimum wage. The determinations are intended for sectors considered “vulnerable”, and in particular sectors where

employers and/or workers are not sufficiently organised to bargain effectively. The determinations can set a minimum wage and can also prescribe conditions specific to the sector for aspects where the BCEA's prescriptions are deemed inappropriate for the specific characteristics of the sector concerned. For example, as seen below, the domestic worker determination provided for five rather than three days of paid family responsibility leave in recognition of the fact that many domestic workers lived far from their families. Where a sectoral determination does not cover any aspect, the BCEA provisions in respect of that aspect hold.

As at September 2013, there were sectoral determinations in eight "industry" sectors. Although the number of determinations is less than the number of bargaining councils, Godfrey et al's (2006) estimates of 2006 suggested that a larger number of workers were covered by sectoral determinations than by bargaining councils.

In addition to councils and determinations, workers and employers bargain and agree on wages in other non-statutory forums ranging from sector level (including the large mining and motor industries) to the level of individual companies.

1.3. Sectoral determinations

The minimum wage for domestic workers was implemented through a sectoral determination. These determinations have many similarities with the wage determinations that were made during the Apartheid years and even before in terms of the Wage Act. Indeed, all the existing wage determinations were declared to be sectoral determinations after the BCEA came into effect. There were, however, some differences between the two instruments. Of importance for our purposes are the nature of the body and process for drawing up the determination and the fact that there could not be a wage determination for domestic workers because domestic workers were not considered to be employees in terms of the Wage Act and other Apartheid labour legislation.

The BCEA provides for the establishment of the Employment Conditions Commission, which plays a key role in drawing up and advising the Minister on sectoral determinations. The Commission initially consisted of five members, with three (including the chairperson) nominated by government, one by organised business and one by organised labour. The composition was later expanded to allow for one alternate for each of organised business and organised labour. The nominees must be approved by the National Economic Development and Labour Council (NEDLAC), which is South Africa's primary statutory body for social dialogue and which must be consulted during the development of labour and economic policies. However, the nominees to the Employment Conditions Commission do not serve as "representatives" of the social partners and are not accountable to them in the sense of receiving mandates and reporting back to their constituencies. The Commission is thus not a tri-partite body in the strict sense of the term.

The BCEA specifies the procedure for drawing up sectoral determinations in some detail. It requires that the Department of Labour issue a public notice announcing the terms of reference and asking for written input from members of the public, conduct an investigation, and prepare a report for consideration by the Commission. The Commission then discusses the report and makes recommendations to the Minister in respect of a determination. The Act also provides for the Commission to hold public hearings. In practice, the hearings are organized by the Department with government officials always in attendance and Commission members sometimes in attendance.

When advising the Minister, the Commission is required to take into account (clause 54):

- the departmental report;
- the ability of employers to carry on their "business" successfully;
- the operation of small, medium or micro-enterprises, and new enterprises;
- the cost of living;
- alleviation of poverty;

-
- conditions of employment;
 - wage differentials and inequality;
 - the likely impact of any proposed condition of employment on employment levels;
 - the possible impact of the proposed conditions of employment on employees' health, safety and welfare; and
 - any other relevant information made available to them.

These issues are discussed explicitly in the reports submitted to the Minister of Labour. Clearly, at least two of these factors – those relating to the “business” and to small, medium and micro-enterprises – were not directly relevant for the domestic worker sector and were thus not considered.

The BCEA does not specify the duration of determinations i.e. the length of time that they should cover. In practice, the Commission has generally recommended determinations covering a three-year period, with additional wage increments specified for the second and third years. The wage increments are generally specified as the consumer price index plus one or two additional percentage points. This should result in a real increase in the buying power of the minimum wage over time. In reality this has not always been the case. One of the reasons for this is the differences in the rates at which inflation occurs for different income groups. In particular, in general the inflation rate experienced by poorer households is higher than the overall “headline” inflation rate.²

The Department of Labour’s inspectorate is responsible for enforcement of sectoral determinations, alongside enforcement of other labour laws. One serious constraint is the size and capacity of the inspectorate. As at end March 2012, the Department of Labour employed only 930 inspectors nationwide, when there were more than 11.4 million employees in the workforce. This constraint prevents adequate inspection and enforcement even of regular formal businesses. There is thus little chance of adequate inspection and enforcement in respect of approximately one million private households.

An additional constraint in respect of the domestic worker sectoral determination relates to access. Inspectors have the right to enter the premises of private (and public) enterprises without an official warrant. This is not the case in respect of private households, where they can only enter with the permission of the employer.

Breaches of the terms of sectoral determinations are, similar to breaches of other aspects of labour law, not regarded as criminal offences. The Act provides for inspectors to issue compliance orders where they suspect breaches of the law. These compliance orders must specify the nature of the suspected breach, any amounts owed to workers, as well as the maximum fine that might be imposed. The order must be given to both the employer and any employees affected, and the employer is required to comply with the order within a specified time period. If the employer does not comply, then the Department may apply to the Labour Court for the compliance order to be made an order of the court. The available evidence suggests that this rarely, if ever, happens in respect of domestic work compliance orders.

1.4. Profile of domestic workers

Estimates of the number of domestic workers in South Africa range from around 780,000 to more than a million over the period spanning the early 1990s to date. The differences in the estimates arise, at least in part, from the use of different definitions. For example, in analysis of survey data, both occupational and industry classifications can be used to identify domestic workers.³

² This is so because the composition of the typical “basket” of goods and services bought by poorer people differs substantially from that of wealthier people. A major proportion of the basket of the poor is made up of food and when, as is common, food prices increase faster than those of other goods, poor people experience a higher inflation rate.

³ Where industry is used, the classification is “private households”. This is the approach recommended internationally for identifying domestic workers. However, at some points in time this approach did not work well

Whatever the method, all estimates confirm that South Africa has an extremely large number of domestic workers and that – where the definition is held constant – there has not been any noticeable decrease over the years. The extent to which women dominate depends on whether gardeners are included in the estimates. Even where they are included, women – and African and coloured women in particular – dominate the industry. This pattern has not changed over the last decades. Domestic workers are found across all provinces of the country, and in both rural and urban areas.

There is some evidence that the age profile of domestic workers has changed, with the mean age increasing over time (see Visser, 2010: 3). The Quarterly Labour Force Survey of the second quarter of 2013 yields a mean age of 42 years, and a median of 41, with 62 per cent aged 30-49 years, 25 per cent 50-plus and 13 per cent under 30 years.

Unfortunately, Statistics South Africa's standard household surveys do not provide estimates of the proportion of domestic workers who are "live-in" i.e. living on the employer's premises. Up until the mid-1980s live-in arrangements were convenient for large numbers of African women who would not otherwise have been allowed to live and work in "white" areas and would have struggled to find other accommodation. The pass laws that underlay this system were abolished in 1986, and restrictions on movement further lessened over subsequent years. However, the shortage of accommodation in urban areas might still make "live-in" arrangements attractive. Further, where a woman has school-age children, living on the employer's premises would afford the children an address that would give them access to better quality schools.

Anecdotally, there are many references to a change in the profile of employers of domestic workers since 1994, with a greater proportion of black employers. This is expected given the increasing numbers of black middle class people since the end of Apartheid.

The Time Use Survey conducted by Statistics South Africa in 2010 included a question at the household level asking which person did the most housework. A special code was reserved for households in which someone other than a household member did the most housework. This code can be used as a proxy indicator of households employing domestic workers.

The percentage of households with non-members responsible for housework stood at 6 overall, but ranged from 2 per cent in African households, to 5 per cent in coloured households, 2 per cent in Indian households, and a much higher 32 per cent in white households. Despite these differing percentages, because whites account for a much smaller proportion of the population while Africans dominate, African households accounted for 30 per cent that employed domestic workers compared to the 54 per cent accounted for by white households. Similar analysis of data from the 2000 Time Use Survey – two years before the sectoral determination – again finds 6 per cent of all households employing domestic workers, with a range from 2 per cent of African households to 29 per cent of white households. These crude estimates suggest little change over the ten-year period.

in South Africa as workers who were clearly not domestic workers, even in the broad sense, were being classified in this sector. (It seems that Statistics South Africa is currently using the code more accurately.)

An alternative approach is to use occupational codes. In particular, code 9131 is used for "domestic helpers and cleaners", with further more specific codes for child care workers, housekeepers, drivers, and other categories. Unfortunately, South Africa does not have a specific code for domestic gardeners, and they are instead classified as "farmhands and labourers" (code 9211). (In earlier years they were classified as skilled agricultural workers.) Similarly, with drivers the occupation code does not distinguish between those who might be considered domestic workers and others, and for housekeepers the occupation code does not distinguish housekeepers in private households and those in hotels and elsewhere. Given these difficulties, estimates based on occupation often use only occupation code 9131.

The extent of the undercount from using only the 9131 code is seen clearly if one uses data from the Quarterly Labour Force Survey of the second quarter of 2012. At that time there were an estimated 904,039 domestic workers using occupation code 9131, but an estimated 1,102,237 domestic workers using the industry code. Occupation code 9131 accounted for 82 per cent of the total, with "farmhands and labourers" (gardeners) accounting for a further 16 per cent

1.5. Organisation of domestic workers

As seen above, sectoral determinations are intended for “vulnerable” sectors in which workers and employers are not able to co-determine wages and conditions.

There is widespread agreement about the challenges involved in organising domestic workers into a trade union, even where the right to organize exists. This is not the place to discuss these challenges. It is nevertheless important to recognize the extent to which domestic workers attempted to organise themselves from the 1970s and even earlier. It is also important to consider the extent to which the main unions were involved in the setting of a minimum wage.

There is evidence of domestic worker organization in South Africa as far back as the second decade of the twentieth century. A major step forward was taken in 1985, when the South African Domestic Workers Union (SADWU) was launched. SADWU brought together a number of regional unions and associations, which had a combined membership of 50,000. In 1986 SADWU became the first affiliate of the newly launched COSATU.

In 1986 SADWU’s membership was estimated as being somewhere between 10,000 and 11,000 (Pandit, 2010: 22). Its primary goal was to win legislative changes, including a minimum wage. Ally reports that at one point (no date given) the union had 85,000 signed-up members. She comments that this achievement disproves claims that domestic workers living in apartheid South Africa were “unorganizable” (Ally, 2010: 150). Visser, citing a claim of paid-up membership of 80,000 by 1989, suggests that the claim needs to be treated with “scepticism” (Visser, 2012).

SADWU received substantial financial and other support from COSATU and its other affiliates as well as from foreign donors. In June 1989 the union launched a legislation campaign. The campaign demands included a national minimum (“living”) wage. Campaign activities included marches, petitions and protest and contributed to the establishment in 1991 of a committee by the National Manpower Commission to look into the issue.

The 1990s saw important legal advances for domestic workers. However, by the early 1990s SADWU was facing serious financial and organizational challenges. The financial difficulties reflected, in part, the low levels of revenue generated through member subscriptions and the heavy reliance on mainly Dutch donors. By 1994, three senior office-bearers were suspended and paid-up membership had fallen to about 14,000. In 1996 SADWU dissolved, succumbing to the financial difficulties and disagreements among the leadership. Despite its demise, there can be little doubt that its campaigning was an important contributor to the introduction of a minimum wage six years later.

In the years that followed SADWU’s demise there was some organization of domestic workers at regional level, but no national voice. In 2001, with financial support from Zurich-based Solifunds, several regional organizations again came together in the South African Domestic Service and Allied Workers Union. This coincided with the period in which the sectoral determination was being debated and, as seen below, the Department of Labour attempted to involve the new union in the related activities.

Ally suggests that in the first years SADSAWU “lacked visible vitality” (Ally, 2010: 154). Fish (2006, 121) writes that within a year of the launch, i.e. in 2002, the union had established six regional offices and had approximately 11,000 members. Ally, in contrast, reports that by 2004, SADSAWU claimed a national membership of 9,000. An ILO publication of 2009 (Morris, cited in Pandit, 2010: 25) gives SADSAWU’s membership at that point as a much larger 25,000. This figure seems unlikely, even if the count is not confined to paid-up members. While there are conflicting figures, even the largest claims are a very small proportion of the approximately one million domestic workers in the country at any time.

Two years later, in March 2011, the Department of Labour issued a notice of its intention to cancel SADSAWU’s registration. The notice was issued in line with the Department’s regular monitoring that

registered unions (and employers' organizations) continue to meet the criteria for registration. In the case of SADSAWU, one of the problems was that its constitution stated that it was a national union, would be represented by paid-up members, and would be self-sustainable. However, only the Cape Town office was operational and the paucity of subscription-paying members meant the union was far from self-sustainable.

SADSAWU obtained support from COSATU and its affiliates as well as some outside funding, and managed to avoid deregistration. In 2011, it was said to have 1,500 paid-up members (Visser, 2012). At that point the union had only sufficient funds to employ one full-time official, and organiser and a part-time office worker. In October 2013 it claimed 21,000 paid-up members. The union is not currently an affiliate of COSATU, but its president operates from the regional COSATU office in Cape Town.

SADWU and SADSAWU have dominated the organization of domestic workers in South Africa since 1986. They are, however, not the only organizations that have organized domestic workers. For example, Wessels (2006: 135) refers to Black Domestic Workers Association (elsewhere she uses the word Union), which affiliated to the National Council of Trade Unions, and claimed 8,434 members in 1995. In addition, some domestic workers join organizations that do not focus only on domestic workers. For example the National Services and Allied Workers' Union, which is also an affiliate of the National Council of Trade Unions, organizes domestic workers alongside workers in contract cleaning and private security. However, in 2010 it had only 700 domestic worker members, of whom only 250 were paid-up (Visser, 2012: 27).

2. The process of setting a minimum wage for domestic workers in South Africa

2.1. Getting the process started

As seen below, the process followed in drawing up the domestic worker sectoral determination was more elaborate than provided for and required by the BCEA. One of the additional aspects of the domestic worker process was the development of a detailed document that was formally issued in 2001 as a way of consulting with the public and any interested parties (Department of Labour, 2001) rather than preparing such a document only for the Employment Conditions Commission. This consultative document provides the basis for a much more detailed record of the development of the domestic worker sectoral determination than is available for other determinations.

The consultative document records that in about 1994 the National Manpower Commission debated whether a minimum wage for domestic workers should be introduced, but could not reach consensus. The main sticking point was reportedly a concern that a minimum wage would result in large-scale dismissals and thus unemployment.

Not mentioned in the consultative document, the Presidential Labour Market Commission of a few years later proposed support for domestic workers, as well as farm workers, being covered by a minimum wage. It acknowledged the challenges, including enforcement and “potential disemployment effects”, and suggested that several different minima might need to be set, with local authorities deciding which was appropriate in their area. It suggested further that local authorities might set up advice offices to assist domestic workers with contracts and ensuring the minimum wage. It also recommended that payment in kind be phased out, but that this be handled “sensitively and realistically” (Commission to Investigate the Development of a Comprehensive Labour Market Policy, 1996: 68-70). The Commission’s report did not elaborate further on the details of a possible minimum wage.

A few years later, with an amended BCEA in place, and a Minister of Labour and Director-General of Labour both of whom had domestic workers as mothers, the process was initiated. The Minister of Labour included the intention to investigate wages and conditions of employment for domestic workers in his fifteen-point programme of action for 1999-2004.

As noted above, the BCEA requires that the Department of Labour issue a public notice announcing the terms of reference for any proposed sectoral determination asking for written input from members of the public, conduct an investigation, and prepare a report for consideration by the Commission. The Commission then discusses the report and makes recommendations to the Minister in respect of a determination. The Act also provides for the Commission to hold public hearings.

In May 1999 a government gazette notice invited “written representation” from “interested parties” to the Commission in respect of the proposed domestic worker determination. There was limited initial response, but after the period was extended, a total of 114 written representations were received. The majority of the submissions came from employers. The Department of Labour understood this bias as reflecting low levels of literacy among domestic workers. It is likely that there were also low levels of awareness among workers about the process.

2.2. The investigation phase

The investigation process that followed, as required by the BCEA, included national and provincial workshops, surveys and desk research and analysis, and consultation through 64 half-day public

hearings spanning all nine provinces. This was followed by serious discussion within the Commission which saw important (generally positive for workers) changes to the provisions proposed in the Department's consultative document.

The domestic worker determination was not the first to be put in place. It was preceded by determinations for contract cleaning (determination 1), civil engineering (2), private security (3 and 6), clothing and knitting (4) and learnerships⁴ (5). Several of these covered sectors that had previously been covered by wage determinations.

The domestic worker process was the most extensive undertaken to date in respect of any of the sectoral determinations. The process for the agriculture determination that followed soon after was also extensive, and these were the only two determinations for which consultative documents were published in government gazettes. The agriculture process was, however, not as extensive as that for domestic workers. Further, one of the lead actors was clear that it was not by chance that the domestic worker determination preceded that for farm workers. In this person's eyes, this reflected the realisation that domestic workers were the priority in needing recognition and protection.

2.2.1. Workshops

The national workshop focused on "internal" actors and probably mainly served the purpose of awareness raising and information sharing as to what was being planned. These included representatives of the CCMA, Compensation Fund, Unemployment Insurance Fund (UIF), officials responsible for skills development, and officials from the Gauteng offices of the Department of Labour. All provinces were also required to organise provincial workshops as part of information gathering. The provincial workshops were used for distribution of questionnaires for employers and workers on wages and conditions of employment.

2.2.2. Research

The Department of Labour commissioned and/or undertook several surveys. The Fafo Institute conducted a telephonic survey of domestic workers in Gauteng province (covering worker demographics, wages and conditions of work), the department itself distributed one-page questionnaires (covering wages and conditions of work and tasks) through the provincial workshops and at taxi ranks, and the skills development section of the department commissioned a survey on skills levels of domestic workers which included questions on wages.

The telephonic survey in Gauteng (Eldring, 2000) achieved a response rate of 300 from 1,500 phone numbers sampled from the telephone directory. In each case, the worker rather than the employer was interviewed, and all but one of the workers was a woman. The report notes possible bias in terms of which employers would allow such interviews to happen and the fact that the employer might have been present during the interview.

Of those interviewed, 76 per cent lived on the premises of the employer. Overall, the mean monthly wage was R717, with a median of R650. The mean wage for live-in workers was higher than that for live-out workers, but because live-in workers tended to work 19 more hours per week than live-out, their hourly rate was lower. Domestic workers in Johannesburg recorded a mean wage of R923 per month, as compared to a much lower R706 in Pretoria and R608 in East Rand. Mean wages tended to increase with level of education. Workers with higher wages tended to have more benefits than others, refuting suggestions of a trade-off between wages and benefits.

⁴ Learnerships are a form of structured skills development programme that combines theoretical and practical learning.

The taxi rank initiative saw 25,000 questionnaires distributed in the main cities of the nine provinces, with 2,885 filled questionnaires returned. The taxi-rank questionnaires were analysed by Markdata, a market research company.

The number of worker questionnaire per province ranged from 93 in KwaZulu-Natal, to 937 in Mpumalanga, while the number of employer questionnaires ranged from six in KwaZulu-Natal to 412 in Eastern Cape. In the latter province, there were only 204 worker questionnaires completed, while in other provinces there were more worker than employer questionnaires. Markdata's report does note, however, that some workers may have completed employer questionnaires and vice versa. The nature of the sample and the problems in the process mean that the data cannot be taken as providing a completely accurate picture of the sector.

The questionnaires prompted for a specified list of possible activities, that included general cleaning (90 per cent of workers) and washing and ironing (84 per cent), housekeeping (61 per cent), cooking (48 per cent) and looking after children (39 per cent). The report noted that live-in workers tended to do more tasks than those who did not. The questionnaire also allowed for respondents to specify "other" tasks that they did. This open-ended question generated the following list of diverse tasks: wash the car, care for the pets, clean vegetables, serve at restaurant, receive calls, assist in guest house, wash windows, wash walls, shopping, wash carpets and floors, clean the (home) office or factory, painting, assistant carpenter, sell fruit, wash curtains, security of the house, cashier, looking after sheep, flower arranging, work in maize fields, messenger, work in shop/club, repair welding machine, water flowers, open/close the garage door, milk cows, clean the swimming pool, sew, sweep yard, sell farm produce, take care of racing pigeons, make sandwiches, assist with photocopying, "tea girl", and work with meat. These responses illustrate the diverse tasks that domestic workers may be required to perform.

Western Cape and KwaZulu-Natal workers recorded the highest wages, and Northern Cape the lowest. Live-in workers recorded a mean wage of R467 versus R452 for live-out. However, as with the telephonic survey, when the hourly wage was calculated, the live-in wage was lower, at R2.33 for live-in versus R2.95 for live-out.

The Department of Labour also commissioned the Development Policy Research Unit (DPRU) at the University of Cape Town to analyse household survey data to provide estimates of monthly earnings including payments in kind, identify the factors influencing earnings, and estimate the impact on employment of the establishment of a minimum wages.

The DPRU (Bhorat, 2000) used data from two household surveys conducted by Statistics South Africa⁵ for this purpose. Wage data were taken from the October Household survey of 1995 as this was the most recent survey to have earnings reported in exact rand amounts rather than wage brackets. Information on payment in kind was taken from the same survey of 1997, which included questions to employers on this topic. Amounts were adjusted for inflation to 2000.

The DPRU reported the national monthly median wage for domestic workers in 2000 as R409 in rural area and R588 in urban areas. This was equivalent to 20 per cent of the wage of a clerk, 7-12 per cent of the wage of a skilled worker, 20-30 per cent of the wage of a semi-skilled worker, and 37-43 per cent of the wage of unskilled workers. Provincially, wages were lowest in the Free State province.

The DPRU estimated disemployment effects for both the short- and long-term. The report warned that if the minimum was set "too high", there was a "very serious risk of large and significant job losses." It offered four further reasons why caution should be exercised. Firstly, for rural domestic workers those losing jobs would face extra difficulties in finding other work given low demand for labour. Secondly, the limited skills of domestic workers would make it difficult for them to find other work. Third, in the economy as a whole there was increased demand for skilled workers and falling or stagnant demand for unskilled workers. Fourth, because most domestic workers supported other people financially, a greater number of people would be affected by each job lost. However, the report noted that the possible

⁵ Previously named Central Statistical Service

disemployment effects needed to be balanced against the need “to provide a signal to employers that rampant exploitative behaviour toward these workers will be made illegal.”

In terms of poverty alleviation, the report noted that although a minimum wage at a level likely to be agreed on might not lift workers above the poverty line, it would increase the income of many workers and thus alleviate, if not eliminate, poverty.

2.2.3. Public hearings

As noted above, 64 public hearings were conducted, with four to six hearings in each of the nine provinces. The venues included both urban and rural areas. A total of 1,800 domestic workers and 350 employers attended the hearings. The Department acknowledged that the relatively few employers who attended the meetings were likely to be those with better wages and working conditions. There is no record of any real opposition being expressed to the introduction of a minimum wage.

Where possible, the Department of Labour tried to involve organized workers, but the weaknesses in organization at the time meant that this only happened in two or three provinces. The only notable input from “organized” (quasi-)employers came from the Confederation of Employers’ Organizations, an organization established in 1989 to represent “consultant and client service agencies” in the area of human resources and industrial relations.

In the absence of a strong domestic workers’ union, COSATU (1999) submitted a well-researched 10-page submission which probably best represents the organized worker position. COSATU’s submission expressed full support for the establishment “and enforcement” of a minimum wage for domestic workers. It argued that the wage should be a “living wage, informed by the social and economic needs of domestic workers and their responsibilities in providing for their families” and that there should be real increases in the wage over time. It proposed “graded minimums” and linkage to a “comprehensive education and training strategy” for domestic workers. It also supported the establishment of a government-supervised retirement funds and coverage of domestic workers by both the UIF and Compensation Fund. It proposed that the Department of Labour investigate establishment of a government-regulated placement agency for domestic workers, and also take “active steps” towards establishment of a centralised collective bargaining system for the sector.

The document’s elaboration of the proposals suggested that the domestic worker minimum should be similar to that for the cleaning sector. (In 1999, the hourly minimum for cleaning was R6.00, giving a monthly wage of R1,170 for a 45-hour week.) The document referred to proposals on actual levels made several years earlier by SADWU, noting that these would need to be adjusted for inflation. The SADWU levels were R1,200 per month for skilled workers and R800 for semi-skilled. For part-time workers, a daily rate of R75 or hourly rate of R9.72 was proposed. Transport costs were to be an additional payment for all categories of workers (implying that live-out workers should receive higher payment than live-in workers if they worked equivalent hours).

The COSATU document proposed that in-kind payments only be allowed if the employer and worker agreed to this, and that at least 75 per cent of the minimum wage should be paid in cash. The document recorded COSATU’s “in principle” opposition to having different minima for different geographical areas, but accepted that there might need to be a transition period over which a single minimum was achieved.

In terms of the need to consider affordability, COSATU’s submission suggested that households should employ a domestic worker for shorter hours if they could not afford the full-time minimum. However, it also pointed out that middle- and high-income households would pay much more if they used commercial contract cleaning, childcare and laundry services rather than the services of a domestic worker. For low-income families, it suggested expansion of public-provided facilities and services.

2.3. The consultative document

As noted above, in July 2001 the Department of Labour published a consultative document in the government gazette. As further noted above, this was a step not required by the BCEA which requires only that the Department prepare a document for the Employment Conditions Commission.

The consultative document included a summary of all activities undertaken up to that time, a chapter describing the nature of the sector including a historical perspective, and a description of current conditions of employment and wages based on evidence gathered up to that time. This evidence included the findings of the various activities described above, including the various surveys and the modelling done by the DPRU. The consultative document also discussed the factors that the Employment Conditions Commission is required to consider, namely alleviation of poverty, job creation and affordability. Finally, it presented recommendations in respect of the scope of the proposed determination, wage levels, and other conditions.

The recommendations in respect of conditions of employment that were to differ from the BCEA can be summarised as follows:

- for overtime, the monthly wage would increase by one-sixth for every five hours of overtime by week, by two-sixths for every ten hours worked, and by three-sixths for every 15 hours worked;
- for night work, an employer could require a domestic worker to sleep in for a maximum of five times a month or 50 times a year, and an allowance of R16 per shift would be payable where a worker was required to sleep in (and be available for work) between 20h00 and 06h00 unless an additional week's leave was provided
- family responsibility leave would be five days per year (rather than the three days in the BCEA)
- employers must keep an attendance register
- domestic workers may not be penalized for damages that occur in the course of their duties
- up to 25 per cent of the wage may be deducted for accommodation meeting specified standards
- a worker may not be required to work more than ten unpaid hours a week in exchange for accommodation.

In respect of wages, the document recommended three different levels, ranging from R3.07 per hour in urban areas, through R2.56 per hour in peri-urban areas, to R2.05 per hour in rural areas. These levels were equivalent to R600, R500 and R400 respectively for a full 45-hour week. These levels would be increased by 7 per cent in each of the next two years.

The research had revealed that there was little truth in the claim that the rural wage rate was lower because workers received more payment in kind. The consultative document recommended that no part of the wage, except for accommodation, should be paid in kind. Where accommodation was considered as in-kind payment, this would not need to be included when calculating overtime, Sunday time and public holiday pay. (The latter provision in respect of in-kind payment reversed the interim provisions of the BCEA of 1997.)

2.4. Changes in the determination during the Commission process

The BCEA provides for the Department of Labour to draft a report on its investigations for the Employment Conditions Commission whenever a sectoral determination is being developed or revised, and for the Employment Conditions Commission then to develop a report with recommendations based on the input from the department and its own deliberations. In recent years, a single report has been produced as the department amends its recommendations if necessary to align them with the Commission's recommendations. In earlier years, the Act's requirements were followed more literally and two separate reports existed. This was visibly the case for the domestic worker investigation where the department's report was published in a government gazette before the Commission commenced its deliberations.

Table 2 compares the provisions recommended in the consultative document issued by the Department of Labour in 2001 with those contained in the determination of 2002 as recommended by the Employment Conditions Commission. It includes only those clauses explicitly referred to in the consultative document and those where provisions differed from the standards specified in the BCEA. The determination also spelt out clauses that were unchanged from those in the BCEA so as to provide a single document with all conditions. These included, for example, the maximum hours of work and requirement that workers receive written particulars of employment.

The table reveals important improvements in the clauses when comparing the consultative document and determination. In particular, the minimum wages are substantially higher – far more than can be accounted for by a single year’s inflation. The increased wages were agreed in the Commission on the basis that the Department of Labour had been too cautious in its proposals, that the DPRU’s analysis was unnecessarily conservative, and that the proposed wages were unacceptably low in terms of buying power. The Commission also felt that minimum wages should not be set lower than the amount of the non-contributory government old age grant, which in October 2002 was set at R640 per month – higher than the Department’s proposed minimum. However, the Commission’s proposed monthly minimum for the higher-paid area was still only R800 for a worker working 45 hours per week, the same in nominal terms as demanded by SADWU many years earlier. It was not at a level that could be considered a “living” wage. The proposed monthly minimum for the lower-paid area was R649 per month for a full-45-hour week, only marginally higher than old age grant.

The determination specifies only two areas for differential wages rather than the three in the consultative document. Some of the other changes would also result in increased pay, such as the higher hourly wage rate for workers working less than 27 hours per week, the specified minimum allowance for standby work and the substantial reduction in the amount deductible for accommodation. Further, although not explicit in the sectoral determination, where workers were earning higher than the minimum prior to the introduction of the sectoral determination, any attempt by an employer to reduce the wage to the minimum would be classified legally as an unfair labour practice.

Table 2. Comparison of clauses in Department of Labour’s consultative document and final determination of 2002

Condition	Consultative report	Determination
Wage hourly, Area A	3.07	4.10
Wage hourly, Area B	2.56	3.33
Wage hourly, Area C	2.05	-
Higher wage for < 27 hours	-	Yes
Minimum 4 hours per day	Yes	
Payment in kind	Only for accommodation Not included in overtime, etc	
Overtime	Stepped approach for agreement on regular extra 5, 10, 15 hours per week	Maximum 15 hours per day and 12 hours per day
Night work	-	If agreed in writing Payment of allowance Transport available for workers who are not live-in
Standby	Restriction on number of times Payment or extra leave for regular sleep-ins [Called “night work”]	If agreed in writing Restriction on number of times Minimum R20 per shift Overtime rate if more than 3 hours
Family responsibility leave	5 days	5 days
Administrative obligations	Pay slip recommended Attendance register	Pay slip compulsory

Deductions	Not allowed for damages	Not allowed for employment or training, work equipment or tools, work clothing, food while working, fine Allowed, with written consent, for membership payments to funds, trade union, formal financial loans, rent Allowed for repayment of employer loan, up to 1/10 th of wage Allowed for court-mandated deductions
Accommodation	Up to 10 hours unpaid per week Up to 25 per cent of wage deducted Accommodation must be waterproof, good conditions, one window, lockable door, toilet and bath/shower unless access to other bathroom	Up to 10 per cent of wage Accommodation must be waterproof, good conditions, one window, lockable door, toilet and bath/shower unless access to other bathroom
Severance pay	Development of code of good practice recommended	One week's pay for each completed year of continuous service
Termination of employment	Development of code of good practice recommended	One week's wages for every four month's work or one day's wages for every 17 days worked Accommodation for one month or, if longer, until contract could lawfully have been terminated, for live-in worker
Allowances	Development of code of good practice recommended	
Social security	Unemployment Insurance Fund investigation underway	
Employment services (labour broking)		Employment service and client are jointly and severally liable for breach of the law

The report of the Commission explains the reasons for each of the deviations from the Department's report. It notes that these deviations were informed, among others, by 139 responses received to the publication of the departmental report in the government gazette as well as additional analysis commissioned from the DPRU and engagement with the Municipal Demarcation Board. The responses to the Departmental report came from trade unions, an employers' organization, non-governmental agencies, academics, other organizations involved in labour matters, church organisations, domestic workers and employers.

2.4.1. Demarcation of areas

As noted above, on demarcation for wage purposes, the Commission proposed a two-way distinction rather than the three-way one proposed by the Department.

The two-way differentiation of the wage level is often referred to as an urban-rural differentiation. This is a hangover from the departmental proposal which was described as distinguishing between urban, peri-urban and rural municipalities. However, the Commission pointed out that the new post-apartheid

municipalities brought together different types of areas so as to promote cross-subsidisation and equalisation. An urban/ peri-urban/ rural distinction was thus not possible.

The Commission instead proposed a two-way division based on household income. The Area A areas were determined by analysis of household income data from the national population census of 1996. Area A was made up of 53 municipalities in which average household income was above a specified cut-off (R24,000) while Area B was made up of all other municipalities. Area A was estimated to account for approximately 52 per cent of all households.

The use of the terms urban and rural is also misleading to the extent that it might suggest that domestic workers on farms are covered by the lower wage. This is not the case as the domestic worker sectoral determination explicitly excludes these workers, who are covered by the agricultural sectoral determination. Analysis of household survey data for 2011 suggests that domestic workers in commercial farming areas account for just under 7 per cent of all domestic workers (occupation code 9131).

2.4.2. Working hours

The Commission rejected averaging and compressing of working hours on the basis that it was not common within domestic work and that the “flat rate” system for overtime hours proposed by the Department would be too complicated for most employers and employees. The Commission report and subsequent determination also distinguished clearly between night work (defined as work between specified hours) and standby (where the worker is required to be on call outside of her normal hours of work at whatever time of the day this might be). These issues had been conflated in the Department’s document.

2.4.3. Sick leave

For sick leave, the Commission proposed that certificates from traditional healers be accepted as proof of reason for absence, whether or not the healer was registered. (This was especially necessary given that no system of registration existed at the time.) The final determination specified that a professional nurse could also sign a certificate.

2.4.4. Deductions

The Basic Conditions of Employment Act, 1997, allows a deduction of 25% of wage for malicious damages as well as for loans if a fair procedure is followed and a written agreement concluded. The Commission noted that the investigation had found that deductions for damages were not common for domestic workers. It felt further than it would be “inappropriate” to penalise workers operating in a “high-risk environment” where breakages were likely to occur during cooking and washing and burns during ironing. Malicious damage to property could be dealt with in terms of the Labour Relations Act.

The maximum allowable deduction for housing was reduced from 25 to 10 per cent on the basis that poor people generally spent a lower proportion of their earnings on accommodation.

2.4.5. Severance pay

The LRA provides that severance pay must be provided where the worker is no longer needed due to “operational reasons”. The Department had recommended that this issue be covered by a (non-mandatory) code of good practice rather than in the determination. The Commission recommended that it be part of the determination. It noted that in the case of a domestic worker, examples of such circumstances were the employer moving elsewhere or to a smaller home, or the worker’s services being no longer needed because a young child was starting school, or a sick or older person had died.

2.4.6. Definition and scope

The sectoral determination had a broad definition of domestic workers. In terms of occupations or types of work, it included:

- gardeners;
- workers employed by households as drivers of vehicles;
- workers taking care of children, the aged, the disabled; and
- workers provided by employment services (i.e. through agency services).

The first three categories followed those used in the 1993 amendment of the BCEA.

The determination also followed the BCEA in considering domestic workers on farms as farm workers rather than domestic workers. This makes sense to the extent that some workers perform both agricultural and domestic work for the employer.

The determination was explicit in covering workers who might be classified as “independent contractors” and those employed through employment agencies. This broad definition mirrored more general amendments to the BCEA at the time which aimed to ensure that employment relationships for all groups of workers – not only domestic workers – would not be concealed so as to avoid falling under labour legislation.

3. Developments since the 2002 determination

3.1. Implementation of the determination

The Department of Labour's efforts continued after the government gazette with the determination had been published. The efforts included training of all labour inspectors, in batches of 80, at the Department's head office in Pretoria. More generally, the tasks of awareness raising and ensuring that all those responsible for implementation had the necessary knowledge and skills were considered important enough for the Department to spend more than R1 million in contracting in expertise and human resources to conduct a "campaign". This is not something that was done in respect of other sectors. It was considered important for domestic workers both because of the novelty – for government officials as well as the public – of these workers being covered by legislation and the difficulties of ensuring that the isolated workers and employers in this sector knew about their rights and obligations.

Awareness raising was considered especially important as the planned approach of the Department was "voluntary enforcement", where employers would be aware of their obligations and comply, and workers would know their rights and complain to the Department when they were violated, while non-governmental organizations and others also had "a positive role to play in ensuring that the implementation of the sectoral determination is successful" (Department of Labour, 2002).

Three companies came together in a "joint venture partnership" named the Golola Consultancy to design and implement the campaign. The partnership hired 27 people who were trained and employed on the "campaign". The campaign included the following elements:

- development of promotional material (brochures, posters and caps) which was distributed through a range of different channels to target audiences;
- talks and discussions were presented on 13 national radio services and 10 community radio services. The total airtime was 22.5 hours and more than 19 million people were reached. television coverage included SABC TV news, e.tv news, Special Assignment and kyknet;
- advertorials were placed in prominent women's magazines, and articles and examples of documents (such as draft contracts) in other consumer media. Nine national magazines and one newspaper extended the campaign beyond the advertorials. The total estimated readership was 8.9 million;
- a total of 241 promotions were hosted at shopping malls, taxi ranks, bus stops, train stations, community halls and churches, reaching close on 100,000 workers and employers on a one-on-one basis;
- a total of 166 events/training sessions for domestic workers were presented and attended by 4,011 workers – well above the target of 66 sessions; 19 events were held reaching 365 employers, and 19 events reaching 161 other stakeholders. The "other stakeholder" group included academics, media, women's groups, and labour relations specialists.

Golola's report on the consultancy is overall positive, but notes a few weaknesses. Perhaps the most important was the lack of materials in languages other than English. (South Africa has eleven official languages, and English is the home language of a minority of the overall population, and of a much smaller minority of domestic workers.) Going forward Golola suggested that employee workshops be replaced with more promotional events conducted in the languages spoken by domestic workers. Golola also suggested abandoning the employer workshops and instead using (undefined) mass marketing techniques.

A further weakness was poor collaboration of the Department's communications department. In contrast, Employment Standards, the section of the department responsible for the sectoral determination, took the campaign very seriously. The department's offices in each of the nine provinces

were provided with guidance as to what to do in cases of attempted “subversion” as well as a “toolkit” (Kahn, 2002). The toolkit included posters, pamphlets, radio scripts, press releases, information slides and “frequently asked questions”. Each province was required to assign a provincial coordinator in the provincial office and to designate an official to coordinate implementation in each labour centre. The staff of all provinces was trained on the contents of the determination.

A smaller second phase of the campaign, again funded from the Department of Labour’s budget, was planned for October 2003 after the Golola consultancy ended to ensure that news of this new protection for domestic workers be well-known.

3.2. Minimum wages and conditions

The inflation rate in South Africa is non-negligible, and any wage-setting mechanism must therefore provide for regular increases simply to maintain the real value of the minimum wage. If an improvement in the situation of workers is wanted, the increases must be greater than inflation.

As discussed above, sectoral determinations are generally revised on a three-yearly basis, with each determination providing for annual increases. The increases are generally specified as some measure of inflation plus one or two percentage points.

Table 3 sets out the minimum hourly wages for four categories of domestic workers as at 1 December 2002 and 1 December 2012. There are two minima for each of Area A, namely the minimum hourly rate for workers who work more than 27 hours a week and the higher minimum hourly rate for those who work 27 hours or less per week. The minima for 2002 are shown in both 2002 rands and, adjusted for inflation, in 2012 rands. The adjusted value is shown to allow assessment of the real value of the wage.

The table shows a marked increase in the real value of the minima across all four categories, from the equivalent of R7.00 per hour in 2012 rands in 2002 to R8.95 for workers in Area A who work more than 27 hours. Comparison of the rates for part-time and “full-time” workers shows an increase in the relative premium (10 to 17 per cent), while comparison of the Area A and Area B rates shows a slight decrease in the relative gap (19 to 15 per cent). All these are positive developments.

Table 3. Minimum hourly rates for domestic workers, December 2002 and 2012

	2002 nominal	2002 (2012 rands)	2012 nominal
Area A >27 hours	4.10	7.00	8.95
Area A <=27 hours	4.51	7.70	10.48
Area B > 27 hours	3.33	5.70	7.65
Area B <=27 hours	3.66	6.30	9.03

Less positive, Table 4 shows the minima specified across other determinations as at July 2013, when the domestic minimum was still at the rate specified for December 2012.⁶ The table reveals that even in Area A, domestic workers have the lowest minimum for all workers other than workers other than drivers in the minibus taxi industry, whose minimum is six cents per hour lower. The gap between the domestic worker minimum and the most obvious comparator – contract cleaning – narrowed marginally over the period 2002 to 2013. In 2002, the domestic minimum for Area A was 58 per cent of the contract cleaning minimum for Area A, while in 2013 it was 62 per cent.

⁶ The table omits the sectoral determination for civil engineering as a bargaining council was established in June 2013 and the sectoral determination therefore falls away.

Table 4. Minimum hourly wages in sectoral determinations as at July 2013

Contract cleaning Area A	14.45
Contract cleaning Area B	13.09
Domestic work Area A	8.95
Domestic work Area B	7.65
Farm workers	11.66
Forestry	11.43
Hospitality <11 workers	12.39
Hospitality 11+ workers	13.81
Private security Area 1	12.52
Private security Area 2	11.88
Private security Area 3	10.73
Taxi drivers	12.71
Taxi other	8.89
Wholesale/retail Area A	12.69
Wholesale/retail Area B	11.17

Particularly noteworthy in the above table is the minimum for agriculture, at R11.66 per hour rather than the R8.95 or R7.65 specified for domestic workers. The first sectoral determination for farm workers was introduced soon after that for domestic workers (in December 2002) and specified a wage that was slightly lower than that for domestic workers. The large difference in favour of farm workers was introduced after major strikes in the agriculture industry of the Western Cape during 2012. These strikes prompted the Employment Conditions Commission to advise on a major increase in earnings.

SADSAWU's wage submission of 2010 to the Employment Conditions Commission acknowledges that the domestic minimum has increased faster than inflation since 2002. However, it notes that these increases were off a low base and that the domestic minimum remained substantially lower than minimum wages set through collective bargaining. In its 2010 submission, SADSAWU proposed a monthly minimum of R2,500 per month, to be applicable to both Area A and Area B. This translates into an hourly minimum of R12.82

3.3. Compliance

As discussed above, there are serious capacity constraints within the Department of Labour's inspectorates. The inspectorate does not conduct regular inspections of households employing domestic workers but instead embarks on periodic "blitz" inspections for the various sectors covered by the sectoral determinations, including domestic work. These blitzes are coordinated by the national Department but carried out by inspectors based in the provincial offices. In 2012, 2,877 domestic worker employers were inspected in such a blitz.

The process of conducting domestic work inspections is laborious. Pandit (201) describes the process used by the Western Cape inspectorate in the domestic worker blitz in the Western Cape during February/March 2009. In some cases, the inspectors identified which households to inspect through UIF records. In other cases, they walked from door to door to find households in which domestic workers were employed. The details of these households were then captured in a database which inspectors used to contact employers to arrange inspections.

One of SADSAWU's submissions for the 2010/11 sectoral determination process includes a long list of suggestions on how inspections and enforcement can be improved (SADSAWU, 2010b). These suggestions were based on recommendations obtained during workshops and other interaction with inspectors. They included, among others, distribution of "calling cards" two weeks in advance of blitz

inspections, improved communication between UIF and domestic employers, regular updating of the database used by inspectors, preparation meetings with inspectors before every “blitz project”, avoidance of clashes with religious and other holidays, campaigns to educate people about the rights and duties of employers and workers, legal amendments to address possible contradictions between laws and remove loopholes, and possible rewards for complying employers. SADSAWU has itself attempted to assist with enforcement by alerting the Department to cases of contravention. However, when following up after inspections have been undertaken and warnings issued, the union has found that contravention often continues.

Numerous research studies have investigated the extent to which there is compliance with the minimum wage and other conditions. The most oft-quoted study is that of Hertz (2005), conducted relatively soon after the determination came into effect. Despite the problems in respect of inspections, Hertz and other studies consistently find an increase in wages resulting from the introduction of the determination, although compliance levels are far from perfect. Unfortunately, Statistics South Africa’s standard surveys do not allow exact measures of compliance because they do not specify ordinary hours of work clearly, workers may mis-report hours (for example, considering meal breaks as paid time), earnings may be under-reported or mis-reported, and the data-set does not allow exact determination of which workers would be in Area A and which in Area B. Nevertheless, the trends found in such studies show a clear increase in real wages of domestic workers after the introduction of the determination.

The studies also find an increase in compliance with other aspects of the determination. In particular, studies find an increase in the percentage of workers with written contracts. (The determination specifies only that workers should receive written “particulars of employment”, but researchers either do not recognise the difference, or take a written contract as a proxy.)

Strydom’s analysis of domestic worker wages and conditions, conducted in 2011, suggests that compliance levels with wages have continued to increase over time. This is not, however, the case in respect of the various conditions of work investigated. Strydom suggests that lack of improvement could be due to lessened publicity and awareness-raising activities on the part of the Department of Labour.

Several commentators raised a concern about non-compliance among black employers. In some cases they noted that black employers might be less able to afford the prescribed wages because their earnings still tended to be lower than those of white people. These “excuses” did not sit comfortable with assertions at other times that those who wanted to employ domestic workers should employ them only for the hours that they could afford.

3.4. Employment

Concern around the possible or likely “disemployment” effects of a minimum wage was probably the main argument advanced against its introduction. One of the Department’s former officials referred to the “hysteria” in evidence around this issue. The Department and Commission spent time, energy and money investigating this issue, including through the DPRU reports.

The first research done by the DPRU suggested that the disemployment effects might be considerable. The research utilised an estimate of elasticity which was considered conservative even for the formal sector. The consultative document pointed out that employment of domestic workers had expanded over the previous five years despite the fact that protection of other labour legislation had been extended to them (Department of Labour, 2001). The Commission’s report recommending the first minimum wage pointed out that in the informal sector of domestic work, where the options facing an employer would be to pay a higher wage or do the work oneself, elasticities were likely to be lower. Further, both the Department and Commission argued that if a prospective employer was not able to afford a full-time worker at the minimum rate, they should employ and pay for the hours that they could afford.

Analysis by several researchers since 2002 has found little or no evidence of any decrease in employment as a result of the introduction of the sectoral determination. The Department of Labour has received a few requests from employers for “variation” i.e. for permission for them to pay below the minimum for one or other reason. The BCEA allows for such variations and the Department quite often grants such requests for variations in other sectors in which there are sectoral determinations. It has not granted the requests in the domestic sector, but instead advised the applicants to reduce the number of hours for which they employ domestic workers.

Visser (2012: 11) cites two small-scale studies which suggest an increase in part-time rather than full-time domestic work since 2002.

3.5. The 2011 determination-setting process

The description above illustrates the extremely intensive and extensive process that accompanied the formulation and implementation of the first sectoral determination. This section gives a short description of the process followed in 2010/11 in setting the wages for the next three years.

The terms of reference for the investigation were published in 2010 and asked for submissions in relation to wages as well as a provident fund, and whether other conditions “such as coverage under Compensation for Occupational Injuries and Diseases Act (COIDA), and annual leave” should be changed.

Unlike for the initial domestic worker determination, but similar to most updating determinations, the Department of Labour did not commission special research for the 2010/11 investigation. The Department held 18 public hearings, mostly over weekends so as to facilitate attendance. Attendance at individual hearings ranged from no-one at a hearing in Mpumalanga, to 96 (of which 81 were workers) at a hearing in Gauteng.

Only two written submissions were received, both from SADSAWU. One submission discussed a provident fund while the other covered wages and other conditions. The union explained in an interview that it preferred to make written submissions as it was not convinced that input at hearings was adequately taken into account.

In the Commission’s deliberations, the main debate was around whether to provide different minima for different job categories. Most members of the Commission felt that they should follow their usual approach of specifying only the minimum rate, on the basis that the aim of sectoral determinations was to provide basic protection to the “vulnerable”. Where workers had skills above the minimum, they should bargain with the employer. This was the agreed position although at least one member as well as the SADSAWU submission, argued for differentiated minima. This issue is discussed further below in the sub-section on skills development.

3.6. The Unemployment Insurance Fund

Most discussions of the introduction of a minimum wage for domestic workers refer to the importance of the near-simultaneous extension of coverage by the Unemployment Insurance Fund to these workers. The issue is relevant in a discussion of minimum wages as the Fund provides for payment of part of the wage when a worker becomes unemployed, is on maternity leave, or is ill for an extended period.

In 1996, the Presidential Labour Market Commission recommended a “thorough overhaul” (1996: 124-5) of the Unemployment Insurance Fund (UIF). For domestic workers it suggested that the UIF be made “available” to domestic workers and their employers as one way of formalising employment relationships and increasing the workers’ security. The way the proposal is framed suggests that the Commission might have been proposing optional rather than compulsory registration of domestic workers with the Fund.

In the years that followed government embarked on a major revision of the UIF system. This was needed as the problems with the Fund extended far beyond the exclusion of domestic and seasonal (agricultural) workers.

In March 2001, the Department of Labour presented the third draft of an Unemployment Insurance Fund Bill to the Labour Portfolio Committee of the national parliament. The draft explicitly excluded domestic workers from the Fund and proposed that a further eighteen months be given for consideration of the administrative challenges of including domestic workers. In response, the Commission for Gender Equality (CGE), a relatively new body provided for in Chapter Nine of South Africa's Constitution of 1996, brought together a coalition to advocate for the inclusion of domestic workers in UIF. The coalition included SADSAWU alongside four well-established non-governmental organisations and COSATU's national parliamentary office. The coalition became known as the Gender Monitoring and Advocacy Coalition for the Unemployment Insurance Fund.

Ally (2010: 156) bemoans the fact that SADSAWU was treated as “merely one among many interested parties rather than as the only worker-controlled representational body” and was “reduced to an auxiliary voice” alongside that of the CGE. Fish (2006) is much more positive about the fact that SADSAWU worked with allies in this initiative.

The members of the coalition presented eleven written submissions and also gave oral presentations during a full day of public hearings in parliament. The submissions pointed out the contradiction of excluding the most vulnerable workers from a key instrument of social protection.

Subsequent major amendments to the Unemployment Insurance Act (no. 63 of 2001) and Unemployment Insurance Contributions Act (no. 4 of 2002) saw radical changes that included removing the upper threshold for contributions and introduction of progressive scaling of benefits that provided a higher percentage of the wage for lower-paid workers and a cut-off upper amount for benefits. The amendments also explicitly provided for coverage of both domestic workers and seasonal workers. However, implementation of coverage of these two groups was to be delayed for 18 months to allow for a task team to deliberate on how these two challenging groups could best be accommodated.

The task team duly met and, soon after the sectoral determination was issued, the UIF was extended to domestic workers working more than 24 hours per month for any employer, using the same hours per month cut-off used for other workers in this and other legislation. Workers who had more than one part-time job would be regarded as “partially unemployed” and eligible for payments from UIF if their income from the remaining jobs was less than the UIF payment due on their full previous earnings.

After only four months of implementation, close on half a million domestic workers had been registered with UIF (Ally, 2010: 72). By end 2011/12, 622,579 domestic employers and 649,894 domestic workers were registered on the UIF's database (UIF annual reports).

3.7. The Commission for Conciliation, Mediation and Arbitration (CCMA)

Ally reports that the protection against arbitrary and instant dismissal that was “one of only a few issues that consistently brought tears to many workers' eyes... was what most captured the meanings of democracy for them” (2010: 9). This protection was introduced through extending coverage of the BCEA to domestic workers rather than the sectoral determination, although the determination confirmed that severance pay would apply and that live-in workers would have a month in which to find alternative accommodation.

It was the CCMA meanwhile that provided assistance where alleged unfair dismissals occurred. Ally (2010: 75) notes that already by 2001, domestic workers were the third largest single category of workers accessing CCMA services, and that in the year after the sectoral determination was introduced, the number of domestic worker referrals increased by 52 per cent, making them second only to retail

workers in the number of referrals. Pandit (2010: 16) reports that over the five-year period 2005-2010, more than 46,000 domestic worker cases were dealt with by the CCMA. Subsequently, domestic worker cases have continued to account for about 10 per cent of the CCMA caseload each year (Bamu, undated).

A series of focus groups with employers and employees conducted in 2010 confirmed widespread awareness of the CCMA as an avenue for assistance (Budlender, 2010). However, Pandit points out that the CCMA assistance comes too late, as it comes after the worker has been dismissed. The CCMA's general policy favours reinstatement as a remedy for unfair dismissal but it rarely orders re-instatement for domestic workers given the one-on-one relationship that underlies the domestic work relationship (Benjamin, 2013).

Bamu (undated) points out that the CCMA's jurisdiction is limited to matters regulated by the LRA, and in particular dismissals and other unfair labour practices. Contravention of the BCEA can only be taken to the CCMA if this happens in the context of an unfair dismissal. However, beyond dealing with unfair labour practices, the CCMA serves domestic workers by referring workers to the union, including advertising the union's contact details at its offices.

4. Reflections on achievements and the way forward

4.1. Views on what was achieved

In the subsequent literature as well as interviews for this research, there was widespread support for the introduction of a minimum wage for domestic workers. There were, however, concerns – including from some of those who had been part of setting the minimum wage – that the wage had been set lower than it could and should have been set.

The most explicit criticism of the determination came from Ally, whose doctoral thesis focused on the topic. Ally commenced her research in 2004, two years after the minimum wage was introduced. She was given access to documentation and had interviews with Department of Labour officials, inspectors and union activists, as well as in-depth repeated interviews with a number of “ordinary” domestic workers.

The book based on Ally’s thesis (Ally, 2010) has the title “From Servants to Workers”. This, in itself, suggests that the minimum wage and related legislation constituted major progress. The book also contains many passages that laud the introduction of a minimum wage. These include the very positive conclusion (Ally, 2010: 184):

By the time of the study on which this book is based, just a decade later, the post-apartheid South African state had crafted one of the most significant efforts anywhere in the world to formalize, modernize, and professionalize paid domestic work.

However, there are also two key criticisms. The first criticism, which is an on-going theme of the book, is that the sectoral determination positions domestic worker as “vulnerable” citizens and, in so doing, disempowers them. Ally questions the fact that government introduced protection for domestic workers rather than finding a way of supporting their self-organising efforts so that they could do this for themselves. In particular, she questions the fact that workers were not part of setting the wage in the Employment Conditions Commission.

One weakness of Ally’s argument is that it ignores the real efforts made by the Department to involve the union and workers in the process leading up to the Commission’s deliberations. It also ignores the fact that the union itself welcomed the determination and saw it as, in part, an outcome of its organisation and demands over several decades. Ally’s criticism could be levelled for all the other sectors for which sectoral determinations are provided. It also raises the question as to whether in this area and others government should provide no protection on the basis that people should demand and claim protection for themselves.

In support of Ally, Pandit (2010) refers to an ILO report which warns against referring to domestic workers as a whole as “vulnerable” so as to avoid implying that women, who account for the majority of domestic workers, are “inherently ‘vulnerable’”. However, Pandit notes that the same report highlights conditions which render particular categories of domestic workers vulnerable and in need of protection. Closer home, COSATU documents refer to domestic workers as “vulnerable”.

There are also some passages in Ally’s book, such as the one which follows (Ally, 2010: 9), which belie the claim that the sectoral determination disempowered workers. In writing about the period after the sectoral determination came into effect, Ally writes:

Domestic workers also more actively claimed their new political statuses as workers with rights. Lining government offices to collect unemployment insurance, packing town halls for government “celebrations” of domestic workers, enthusiastically signing up for

government sponsored professionalization programs, and boldly cramming into the officers of the governmental industrial relations commission to lay complaints against their employers, South African domestic workers claimed their rights with a frenetic energy and political maturity many imagined them incapable of.

Ally's second key criticism relates to the fact that the determination left the widespread system of private provision of domestic services in place rather than finding a way of "socialising" this work. This criticism is one she also levels at the international ILO-led process around Convention 189, which she felt did not take into account the feminist understanding of social reproduction developed in the 1970s. However, even here Ally (2010: 69) writes that the "landmark determination" represented "the effort to recognize and recode [domestic workers'] social contribution and value in ways advocated for by the feminists of the 1970s."

Most commentators emphasise that the setting of a minimum wage cannot be seen as separate from the other forms of protection that were introduced both within the sectoral determination and beyond it. Table 5 below documents the various pieces of legislation that extended different types of protection and opportunities to domestic workers between 1993 and 2002.

Table 5. Extension of legal protection to domestic workers

Basic Conditions of Employment Act, 1993	Particulars of employment, work hours, paid annual leave, family responsibility leave, sick leave, termination
Labour Relations Act, 1995	Organizational rights, and protection against unfair dismissal
Labour Relations Act, 1996	Right to organize and unionize
Skills Development Act, 1998	Skills training
Employment Equity Act, 1998	Discrimination in hiring and work practices
Unemployment Insurance Act, 2000	Unemployment and maternity leave cover
Sectoral Determination 7, 2002	Minimum wage and conditions of employment

Source: Adapted from Fish, 2006: 115

4.2. Unfinished business

There are several issues that have been raised repeatedly from the time the sectoral determination was first mooted but that have not yet been adequately addressed, or addressed at all.

4.2.1. Provident fund

The first of these issues is a provident fund, or some other form of retirement provision. This issue can be seen as directly related to a minimum wage as (a) workers can only afford to contribute to such a fund if their wage is adequate; and (b) retirement earnings are a function of earnings while working, and retirement earnings will therefore be inadequate if the minimum wage is not set high enough.

The Department of Labour's report on the public hearings organised for the first sectoral determination noted that domestic workers wanted a provident fund and were willing to contribute up to R50 per month. The issue was acknowledged as one that needed further investigation and action. The Commission's report to the Minister recommended that the Department commence "as soon as possible" to establish a provident fund. However, no real progress was made on this issue and in 2010 the terms of reference for the current sectoral determination again named a provident fund as an issue that needed to be discussed.

One of SADSAWU's 2010 submissions (SADSAWU, 2010a) focused on the provident fund issue. It observed that at least three private financial institutions had provident or retirement funds that were

available to domestic workers. However, it noted that domestic workers (or their representative organisations) were not involved in the governance of the fund as was the case for funds falling under bargaining councils.

The sectoral determinations for contract cleaning and private security provided for the establishment of provident funds for these sectors. The funds were duly established and, as for bargaining council funds, the trustees consist of worker and employer representatives. However, the funds provide very limited benefits because there is no cross-subsidisation by higher-paid workers. The ILO has assisted the Department of Labour with a discussion paper and workshop on a provident fund for low-paid workers. However, there will probably not be an effective solution until government moves forward with the establishment of comprehensive social security. This has been mooted by the National Treasury since at least 2006, but efforts seem to have stalled.

A further complication relates to the old age grant. This is a form of non-contributory social assistance which is available to all South African citizens and permanent residents aged 60 years and above if they pass a means test. The maximum monthly grant amount is currently (since October 2013) R1,270 per month, and the means test threshold for a single (unmarried) person is R49,920 per annum (South African Social Security Agency, 2013). The amount of the old age grant is reduced the nearer the person's other income is to the threshold. This situation means that a small contributory private pension is not worthwhile. The Minister of Finance has committed to universalising the old age grant by 2016. When this is done, this disincentive to private provision for old age will fall away.

The Employment Conditions Commission report of 2011 notes that the Minister of Labour announced in his 2009 budget vote speech that the Department planned to establish provident funds for both the farm worker and domestic worker sectors as part of the country's decent work agenda. It was for this reason that the issue was included in the terms of reference for the investigation for the sectoral determination. The Commission was advised to speak to National Treasury before proceeding with a provident fund as the National Treasury, presumably to discuss how this would fit into larger plans for comprehensive social security. The National Treasury gave a presentation to the Commission, but the task of taking things forward lies in the hands of the Department.

The second often-mentioned aspect of unfinished business is that domestic workers are still not covered by the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993. This Act provides for employers to make contributions for each worker on a scale determined by the relative risk of the sector. As noted above, the terms of reference for the 2010/11 process asked for submissions on this issue. The Commission's report suggests that the matter be submitted to Compensation Commissioner and then, if there is agreement, it be referred to NEDLAC.

4.2.2. Skills development and recognition

The publicity around the first determination in 2002 described the determination as part of an "integrated" approach that would look not only at conditions of employment and a minimum wage, but also at training through the sectoral education and training authority (SETA).

The SETAs were part of the country's new, ambitious European Union-funded skills development programme. The Skills Development Act was passed in 1998 (no. 97 of 1998) and the Skills Development Levies Act in 1999 (no. 9 of 1999). It then took some time for government and other role-players to agree on demarcation of sectors, for the SETAs to be established, and the levy-paying to start. The Services Sector Education and Training Authority (SSETA), which is the relevant SETA for domestic workers, was established and registered in March 2000, when the sectoral determination process was already underway. One of the key actors noted that even by the time the sectoral determination was finalised, the SSETA was not fully up and running.

A Domestic Workers Skills Development Project was, however, established as early as 1999, before the sectoral determination was in place (Wessel, 2006: 136). The project was established under the auspices of the Department of Labour and the National Training Board, the forerunner of the National Skills

Authority. Two services providers were appointed to provide the training, namely the non-governmental Basadi Pele Foundation and the Berchzicht Training Centre in the Wetsern Cape.

There were delays in implementation, and the project eventually ran for three years, from May 2002 to March 2005. The activity was facilitated by an allocation of R120 million from the National Skills Fund to the Services SETA for work in respect of domestic workers. Ally reports that the project aimed to provide state-subsidised training and certification to 27,000-plus domestic workers (Ally, 2010: 70).

An article in March 2005⁷ states that the targets set for the R120 million was for 10,750 workers to complete skills programmes and 1,750 to participate in learnerships. The project had, however, exceeded this, with 16,000 workers completing skills programmes and 2,428 completing one-year learnerships. The article noted that the funds had all been utilized and it was unclear whether further funding would be made available.

The role played by SADSAWU in this initiative is unclear. Wessels (2006: 145) writes that the board of the domestic chamber included representation from SADWU and the Black Domestic Workers Union alongside the South African Homemakers Organisation but her source for this is a 1998 document. The SADSAWU web-site (www.sadsawu.com) includes an undated report claiming that the Department, together with SADSAWU, had trained close on 27,000 workers in a two-year pilot programme. The web-page notes that SADSAWU “will have a meeting with the Department of Labour, with regards to these and other matters, within the next two months.”

The Services SETA no longer has a Domestic Workers Chamber. Instead, domestic workers and garden services fall under cleaning, which together with “hiring services” constitutes one of the SETA’s six chambers. The SETA was relatively inactive for a period of two to three years after it was placed under administration in 2010. Now that it is no longer under administration, it is trying to revive a partnership with Department of Labour and UIF in respect of domestic workers. The Skills Development Planning Unit within the Department has planned and budgeted to train 1,000 domestic workers by the end of the 2013/14 financial year. The training will cover basic training as well as areas such as first aid and driving. The intention is to lay the basis for a more skilled domestic workforce as well as to help workers move out of the sector. With the first aspect, unless the greater skills are rewarded with higher pay, they will be of greater benefit to employers than workers.

As noted above, one of SADSAWU’s 2010 submissions to the Employment Conditions Commission discussed skill levels. The submission noted that the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR), had questioned the classification of domestic work as “unskilled” and “emphasized the importance of recognizing the varying degree of skill associated with domestic work when establishing remuneration, so as not to undervalue the work performed” (SADSAWU, 2010b).

SADSAWU’s submission, which was endorsed by several non-governmental organizations as well as COSATU, advocated for skills development programmes that would “professionalise” domestic work. The submission argued that skills used in domestic work were generic, and similar to those used in other sectors such as hospitality, but that they were “valued and rewarded” differently in these other sectors.

In the absence of clear definition of skills, the submission advocated for minimum wages based on level of education. It noted that the improved literacy, numeracy and other skills associated with more years of education would add value to the services of the worker. However the submission also argued for recognition of prior learning and/or work experience, for those who had been denied access to formal education. The submission proposed that the Department establish a Domestic Worker Employment Standards Commission by June 2011 to determine standards, skills, and qualifications in this sector. It

⁷ <http://www.skillsportal.co.za/page/skills-development/learnerships/427035-Night-of-celebration-for-500-domestic-workers>.

proposed that the Commission be made up of other (unspecified) government departments, research institutes, trade unions and “other relevant stakeholders”.

The SADSAWU submission encapsulates the thrust of skills development proposals and interventions of other actors. Firstly, there is the argument that the skills used in domestic work be recognised in higher pay. Secondly, there is the implicit or explicit idea that if workers gain formal recognition of such skills they may be able to move out of domestic work.

The first aspect requires that the determination specify different skill levels. This is difficult when individual workers do a range of different tasks. It is also not clear which skills should be valued more than others. In this respect, Eldring (2000) notes the irony that workers employed as nannies tended to earn less than those employed to do ordinary housework tasks.

4.3. Bargaining council

As noted above, COSATU’s submission in respect of the first sectoral determination suggested that government take steps to work towards establishment of a bargaining council for the domestic work sector. In the interview for this research, SADSAWU said that they were keen to establish such a council. Formation of a council is also favoured by the Social Law Project of the University of Western Cape which has a Domestic Workers Research Project.

It is, however, difficult to see how a bargaining council as envisaged in South African law could be established for a sector in which union membership is at such a low level and organization of employers practically non-existent as neither side is at all likely to achieve the “sufficient” representivity required by the law. SADSAWU suggests that Business Unity South Africa (BUSA), which represents business in NEDLAC, could serve as the employer body as most of the individuals associated with it would employ domestic workers. This idea has not, however, been formally discussed within BUSA.

4.4. Placement agency

COSATU’s submission in respect of the first sectoral determination (COSATU, 1999) proposed that the Department of Labour investigate establishment of a government-regulated placement agency for domestic workers. The report of the Employment Conditions Commission for the 2002 sectoral determination acknowledged that this was not a “foreign concept”. Such a system had, in fact, existed during the Apartheid era, although with the aim of controlling the movement of black workers. The Commission suggested that establishment of such an agency be addressed after other aspects of formalization had been completed.

An interviewee noted that in 2013 if one contacted the Department asking if there were people registered on the UIF system as unemployed who might want a domestic work job, the Department’s response was that they served industry rather than private households. The interviewee suggested that the “mindset” that underlay this still did not recognize domestic workers as full workers.

Conclusion

A former government official, in reflecting back on what had been done, characterized the introduction of the sectoral determination as a process of “de-slaving” and reasserting the dignity of domestic work. The ex-official said that domestic work was tackled before agriculture because “domestic work was the most gross manifestation of exploitation of black women. If liberation meant anything, they should experience it”.

Another ex-official referred to the influence of the ILO. South Africa has been excluded from the ILO during the Apartheid years and cherished its re-entry highly. Removing the worst excesses of domestic work was seen as part of “normalization”, given that the institution of domestic work was such a typical phenomenon of the Apartheid South Africa – “South African through and through”.

The introduction of a minimum wage and other protection for domestic workers can be considered one of the success stories of post-1994 South Africa. There is, however, still much “unfinished business”.

Appendix: Matrix

Country	South Africa
DW coverage description	MW coverage through sectoral determination passed in 2002. (Two-area distinction based on mean household income; higher minimum for part-time workers)
GENERAL MINIMUM WAGE	
Procedure	Collective bargaining through registered bargaining councils or unregistered forums; or Minister of Labour decides on basis of advice from tripartite Employment Conditions Commission
Coverage	Collective bargaining agreements and sectoral determinations
Scope	Varies, but primarily industrial sector. Not all sectors are covered by a minimum wage.
Criteria for initial MW	For sectoral determination, the ability of employers to carry on their “business” successfully; the operation of small, medium or micro-enterprises, and new enterprises; the cost of living; alleviation of poverty; conditions of employment; wage differentials and inequality; the likely impact of any proposed condition of employment on employment levels; the possible impact of the proposed conditions of employment on employees’ health, safety and welfare; and any other relevant information
Level (incl PiK)	For sectoral determination, on advice of Employment Conditions Commission
Date first established	Varies
Frequency of adjustments	Usually every three years, but provision for annual increases
Criteria used for adjustments	Consumer price index (inflation) plus additional amount so as to have a realy increase over time
Enforcement	Labour inspections and (rarely) fines; awards of damages and awards of compensation
If domestic workers were originally excluded, what were the reasons?	Concerns around disemployment effects; difficulties in enforcement; domestic workers not recognized as “workers”
DOMESTIC MINIMUM WAGE	
Country context	Minimum wage introduced as part of major reforms introduced after the end of Apartheid
Employment share of domestic work for the latest year available	8.0 per cent of total employment, and 9.4 per cent of all employees based on industry classification, Quarterly Labour Force Survey 2013: 1
Date first included	2002
Reason for inclusion	Extension of protection and rights to the most oppressed workers, of whom majority are black women
Procedure	On recommendation of tripartite commission
Coverage	Sectoral

Level (Inc scales and PiK)	R4.10 per hour for Area A; R3.33 per hour for Area B; maximum of 10 per cent as payment in kind in respect of accommodation. No other payment in kind.
Criteria used for initial MW Progressivity (explain why and how)	Poverty alleviation, job creation, affordability for employers Annual increases above inflation; narrowing of gap between rural and urban wages; higher hourly wage for those who work less than 27 hours per week
Frequency of adjustments	Annual
Criteria used for adjustments	Inflation plus one or two percentage points
Enforcement	Blitz inspections (inadequate)
Key informant impressions	Extremely important achievement
Outcomes/Compliance	Clear increase in real wage levels over time, as well as improvement in other conditions, but still substantial levels of non-compliance

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Myrtle Witbooi, SADS AWU, 4 October 2013

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Additional information received Paul Benjanim, Mathilda Bergman, Saliem Patel and Brenton van Vrede.

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