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**AN IMPLEMENTATION ANALYSIS OF SECTORAL DETERMINATION SEVEN
(SD7) of the BASIC CONDITIONS OF EMPLOYMENT ACT 75 OF 1997 (BCEA):
A CASE STUDY OF DOMESTIC WORKERS IN UMSUNDUZI MUNICIPALITY**

BY

Zamantungwa Mabaso

(213527683)

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SUPERVISOR: Dr Desiree Manicom

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DECLARATION

I Zamantungwa Mabaso declare that:

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Date.....

ACRONYMS

- BCEA** - Basic Conditions of Employment Act 75 of 1997
- CCMA** - Commission for Conciliation Mediation and Arbitration
- DoL** - Department of Labour
- ILO** - International Labour Organisation
- LRA** - Labour Relations Act 66 of 1995
- OECD** - The Organisation for Economic Cooperation and Development
- SADSAWU** - South African Domestic Service and Allied Workers Allied Workers
Union
- SD7** - Sectoral Determination Seven
- The constitution** - The Constitution of the Republic of South Africa 1996

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ABSTRACT

This study examines the issues related to the implementation of Sectoral Determination 7 (SD7). The study investigates domestic workers' experiences of their working conditions, in order to establish the extent to which SD7 is effective in affording them labour rights, and improving their working conditions. SD7 was promulgated in 2002 by the Minister of Labour in order to regulate domestic work in the country. The promulgation of SD7 came about as a result of the shortfalls of the existing legislation such as sections 23(1) and (2) of the Constitution and the Labour Relations Act 66 of 1995, as well as the Basic Conditions of Employment Act 75 of 1997 being insufficient to respond to the challenges of exploitation, oppression and abuse which shape the domestic worker sector, not only in South Africa, but globally. Over the years it became apparent that there needed to be an intervention to combat the oppression and exploitation faced by domestic workers globally. Hence, in 2011 the ILO ratified Convention No. 189 which set the international standards for the regulation of domestic work internationally. Further, Recommendation 201 was passed by the ILO which aims to stipulate the guidelines for the strengthening of policies on domestic work and national law.

Despite national and international policies on the regulation of domestic work being passed, previous studies have shown that these policies have not resulted in the working conditions of domestic workers improving, and them being empowered with labour rights like their counterparts in other labour sectors. This study uses implementation theory, and the implementation of regulatory policy in particular, as well as power and street-level bureaucracy to analyze the implementation challenges of SD7 of the BCEA 75 of 1997. The study used qualitative data analysis and content thematic analysis to analyze the data. The main themes which emerged from the findings were: conceptualizations of SD7, access to provisions of SD7 and the challenges experienced with the implementation of SD7.

The findings of the study supported the argument that domestic workers are unable to access these rights as a result of the power imbalance between them and their employers. Further, the study found that the policy design of SD7 does not take into consideration the intricacies of the domestic worker sector, therefore SD7, for the most part, has not improved the working conditions of domestic workers. Moreover, a poor monitoring system on the part of DoL does nothing to deter non-compliance by employers.

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CHAPTER ONE: INTRODUCTION

1.1 Background to the Study

Prior to the democratic dispensation in 1994, South Africa was under an apartheid regime (Jacobs et al, 2013). During apartheid, South African society was divided along racial lines (Barret et al, 1985). Society at large was characterised by gross violations of human rights, inequality, oppression and exploitation (Barrett et al, 1985). Inequality during apartheid was mainly shaped by race, gender and class (Marais, 2014). Government manifested oppression by denying black people socio-economic opportunities. Amongst other things, Black people were given an inferior education compared to their White counterparts (Briley, 1987:8). The education system (Bantu Education) for black people during apartheid was designed to institutionalize black people to perceive themselves as inferior, and Whites as superior to them (Briley, 1987:5). Bantu Education only prepared black people to do semi-skilled and unskilled jobs. Skilled jobs were reserved for White South Africans (Marais & van Wyk, 2015). At the periphery, being the most oppressed and exploited, were black people, and women in particular who were the most oppressed group in society (Fish, 2006:108-112).

During apartheid, the majority of black people were not well educated or possessed the necessary skills for the labour market. This meant that black people had limited opportunities in the labour field (Durrheim, et al, 2011:5-11). Owing to this reality, being a domestic worker was largely seen as job suitable, mainly, for poor, black women (Ally, 2008:3). Domestic work can be defined as labour performed in a private household in exchange for a remuneration for the work performed (SD7; RSA 2002). Therefore, a domestic worker can be defined as a person who is employed in private household, to perform certain duties in the household, and is payed a salary or wage for performing those duties. As a direct consequence of lack of education, poor socio-economic standing, race, and gender of domestic workers, they were by default, vulnerable workers (Jacobs et al, 2013). Further, there was a secondary vulnerability to domestic work during apartheid: due to the absence of legislation regulating the domestic labour sector; domestic workers in South Africa did not have rights under the apartheid regime (Du Toit, 2013). Even in the present day, inequality and exploitation in the domestic labour sector is a global phenomenon (du Toit, 2012; Jacobs et al, 2013).

Historically, domestic workers have been excluded from the protection of labour legislation and collective bargaining. The perception was that domestic labour fell outside of what was deemed “productive labour” (du Toit, 2013). The dominant perception by society at large was that domestic work takes place in the private space of employers ie. their homes, therefore there was a reluctance to regulate domestic work because regulating the sector amounted to interference in ‘domestic affairs’ (Fish, 2006; Dhlamini & Murray, 2009). Further, domestic workers could not mobilize each other to form alliances such as trade unions which would negotiate working conditions and benefits and fight exploitative labour practices on their behalf, due to the isolated nature of domestic work (du Toit, 2012:34-35). As a result, domestic workers have been amongst one of the most vulnerable groups of workers in South Africa, being at the mercy of their employers (Ally, 2008). This vulnerability was further perpetuated by the fact that there was and still is a surplus of unskilled labour in the country (Durrheim et al, 2011:9).

When South Africa became a democracy in 1994, the country went through legislative reform in order to develop a culture of human rights in all segments of society, so that the suffering and injustices of the past would never happen again (Du Toit, 2013:77). The South African Constitution proclaims the human rights of all South Africans, in Section 2 of the constitution (RSA Constitution, 1996). Despite this significant pro-active step being taken by government, the domestic labour sector still did not have any laws regulating domestic work specifically, and therefore domestic workers continued to be exploited. Domestic workers were only protected in 1997, under the Basic Conditions of Employment Act 75 of 1997 (BCEA) which is a piece of legislation that protects all workers in South Africa, and thus is not tailored to deal with specific issues in the domestic labour sector. Further, the BCEA only protects full time workers, which means domestic workers, working on an hourly rate for multiple employees, were not protected by this legislation (Fish, 2006:108).

The regulation of working conditions and minimum wages for different sectors in South Africa is determined in one of two ways; (1) through the Bargaining Councils, which are a centralized form of bargaining whereby employers in sectors and trade unions meet to negotiate the terms and conditions of employment in each sector; (2) the regulation of working conditions and minimum wage setting for a sector may be determined through Sectoral Determination (Elsley & Mthethwa, 2014). In an attempt to address the shortfalls of the BCEA in the domestic labour field, the Minister of Labour promulgated Sectoral Determination 7 (SD7) in 2002 to regulate the domestic labour sector (du Toit, 2013). SD7 provides legal protection to domestic workers by

regulating working conditions, working hours, overtime pay, minimum wage per hour, leave provisions, and the conditions under which a contract of employment may be terminated, and the procedure that must be followed in doing so (SD7; RSA 2002). Sectoral determination refers to the regulation of working conditions and minimum wage setting, as determined by the Minister of Labour. The BCEA provides that for labour sectors which are not included in the Bargaining Council, and those with weak organization and/or are deemed vulnerable, and therefore likely to experience exploitation, the Minister of Labour must intervene by regulating the working conditions and wage setting for employees in such sectors (B.C.E.A.; RSA 1997).

Despite the promulgation of SD7 of the BCEA, there are still persistent challenges in the regulation of domestic work, and domestic workers continue to face challenges in accessing their labour rights as prescribed in SD7, for amongst other reasons, the power relations that exist between them and their employees, as Dhlamini & Murray (2009) concluded in their study done in 2009 in Pietermaritzburg, as well as du Toit (2012) whose study was conducted in 2012, in Stellenbosch. Hence, the purpose of this study is to investigate the challenges related to the implementation of SD7 legislation, and the accessing of labour rights by domestic workers as set out in SD7.

1.2 Research Questions and Objectives

The purpose of this study is to investigate the issues related to the implementation of Sectoral Determination 7 legislation and to investigate the experiences of domestic workers' working conditions, and the extent to which they can access their labour rights.

The key questions that were asked related to the implementation of Sectoral Determination 7 in uMsunduzi Municipality are:

- · What are domestic workers' conceptions of S.D.7?
- What are domestic workers' experiences of S.D.7 implementation?
- What are the government department's experiences of implementing S.D.7?
- What are the experiences of unions in representing the interests of workers in the domestic worker sector?
- What are the attitudes and perceptions of S.D.7 by employers of domestic workers?

The broader objectives related to the implementation of Sectoral Determination 7 which provide an understanding for the reasons why successful implementation of S.D.7 is an elusive goal, and the reasons behind this elusiveness. The broader objectives that guided the project are to:

-
- establish domestic workers' level of awareness of their labour rights
- establish the extent to which S.D.7 has empowered domestic workers to access labour rights
- investigate the challenges involved in regulating vulnerable labour sectors in South Africa
- investigate the challenges involved in organizing workers and collective bargaining in vulnerable labour sectors in South Africa
- investigate how the attitudes and perceptions of employers in vulnerable labour sectors affect their level of compliance with regulations in the sector.

1.3 Research Design

1.3.1 Methodology

This study adopted a qualitative approach. Qualitative research allows a researcher to take an in-depth look at the phenomenon which they are studying. Further, qualitative research aims to understand the full complexity of a phenomenon, as well as capture participants' subjective experiences of their lived reality, in order to understand it (Bezuidenhout et al, 2014:23-30). "Qualitative research also provides the means through which a researcher can judge the effectiveness of particular policies and practices" (Terre Blanche and Durrheim, 1999:7). The aim of this study was to use the qualitative approach to investigate, describe and explore the subjective lived realities of domestic workers in uMsunduzi municipality, in order to better understand their working conditions in the democratic South Africa, as well the impact which they feel S.D.7 has on their working conditions. This study is located in the interpretivist paradigm which aims "*to describe and analyse the culture and behaviour of humans and their groups from the point of view of those being studied*" (Bryman, 1988:46). Interpretivism is suitable for the research because it relies on personal in-depth interviews as its primary source of data collection. The qualitative approach is fitting for this study as it does not seek to make generalizations but rather, it aims to gain understanding of the participants' subjective experiences of S.D.7

3.2 Case Study Approach

A case study approach was used for this study. Babbie and Mouton (2001: 288) define a case study as “*intensive investigations of a single unit, with its context being a significant part of the investigation*”. For this study, the case study comprised of domestic workers from the uMsunduzi Municipality area, KwaZulu-Natal.

1.3.3 Data Collection Methods

Primary data was gathered through semi-structured in-depth interviews. An in-depth interview may be defined as a process in which a researcher sits down with a participant and asks them questions, with the intention of obtaining the participant’s opinion on the questions asked (Bezuidenhout, 2014). The interviews gathered information on the opinions of the participants on issues related to the implementation of SD7. The interviews were conducted in either isiZulu or English depending on the participant’s preference. All discussions were tape recorded with a tape recorder as well as a cell phone. Data was transcribed verbatim meaning that data was rewritten word for word (Maree, 2007: 104). For the data that was in isiZulu, it was translated into English, after being written down verbatim from the tape recorder in order to avoid having the researcher subjectively interpret the data, rather than simply translate it into English in the words of the participants.

Primary data that was used include: the interviews which were conducted and the South African Constitution, the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997, Sectoral Determination 7, 2002, and the Employment Equity Act 55 of 1998. Secondary data was gathered in the form of official publications, newspapers, reference books, scholarly journal articles, and web based literatures.

1.3.4 Sampling

A sample refers to a selection of units taken from a population of interest. Sampling, therefore, refers to the activity of choosing units from a group of interest in order to make fair generalizations inferred from the sample which was studied (Bezuidenhout et al, 2014).

This study used a non-probability sampling method. It employed the purposive, as well as convenience sampling technique. The purposive sampling technique allows the “researcher to gain important information into a particular matter, using information gathered from relevant

participants”. Participants are chosen based on specific shared characteristics which the researcher is interested in studying (Babbie & Mouton, 2001: 166). For this study, purposive sampling was appropriate as the study needed to purposefully select participants on the basis of them being female, and being either Black, Indian or Coloured. Convenience sampling is adopted by a researcher when they choose a sample, because it is most convenient for the researcher to access that sample (Bezuidenhout, 2014). The researcher accessed the participants through SADSAWU (South African Service Allied Workers Union) which is a domestic worker union active in the Pietermaritzburg area. Other domestic workers were selected using the snowballing method.

1.3.5 Data Analysis Methods

This study analyzed the data using thematic content analysis. It used manual coding according to the themes which were identified during the analysis of the findings. Thematic analysis is a technique that involves identifying patterns and analyzing those patterns in qualitative data (Braun & Clarke, 2013:3). Bezuidenhout et al (2014: 234) argue that content analysis is used to explore and identify both obvious and hidden themes. Coding of the data helped the researcher critically analyze the data and also retrieve and group together the data according to thematic ideas (Maree, 2007: 105). The themes were derived from the conceptual and theoretical framework of the study. The three main themes which were identified and explored include: firstly, the conceptions of SD7 by the respondents, secondly, the experiences of S.D.7 by the respondents in relation to access to UIF, negotiating contracts and working conditions, and the final theme was the challenges faced by SD7; mainly collective bargaining and organization, as well as compliance.

1.4 Limitations of the study

The limitation of this study is that the researcher was unable to get approval for permission to interview staff from the Department of Labour who are involved in the implementation of S.D.7, in order to use Street-Level Bureaucracy to analyze the impact which their actions influence the extent to which S.D.7 is effective in regulating domestic work in South Africa. The Department of Labour had still not responded to the interviewer’s request at the time when this study was concluded.

1.5 Structure of the dissertation

Chapter 1: Introduction

This chapter provides a background to the study, as well as discusses the research methods and methodology used in the study.

Chapter 2: Literature Review

This chapter provides an overview of the existing body of literature on the regulation of domestic work

Chapter 3: Theoretical /conceptual framework

This chapter discusses power as a conceptual and implementation theory as a theoretical framework for understanding the implementation analysis of SD7.

Chapter 4: Policy framework for Domestic Work in South Africa

This chapter presents the policy and legislative framework for domestic work regulation in South Africa. This includes Convention No. 189, the South African Constitution, the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997 and SD7 of the Basic Conditions of Employment Act 75 of 1997.

Chapter 5: Findings and Analysis

This chapter presents analysis of domestic work regulation using the conceptual and theoretical frameworks: namely power, implementation theory vis-a-vis the implementation of regulatory policy specifically, as the SD7 sectoral determination seeks to regulate the domestic labour sector in South Africa. Further, the policy and legislative framework is also used to inform the analysis. The findings are presented according to themes of similar ideas.

Chapter 6: Conclusion

This chapter summarizes the research findings and gives general conclusions of the study based on the findings of the study.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

This chapter presents the existing the existing body of work on the plight of domestic workers and the challenges associated with regulating such a vulnerable sector, both internationally and nationally. The chapter is divided up into three broad sections; (a) international studies on domestic work, (b) regional studies on domestic work, and (c) national studies on domestic work. The conclusion summarizes the content of the chapter and places this study in the context of existing literature, and provides a rationale for why such a study is necessary.

2.2 International studies on domestic workers

The common thread amongst all studies carried out on the nature and characteristics of domestic work is that it is largely gendered, racialized and exploitative. Jacobs et al (2013:274) and Bosch & Mcleod (2015) argue that the vulnerability of the domestic labour sector is a global phenomenon.

(i) Vulnerability as a result of isolated, individualized employment relationships

Domestic workers play an important role in the global economy as they facilitate the functioning of the labour market, by allowing other workers to work outside of their household (Chen, 2011:168). Despite this, for the most part, domestic workers are not perceived, or recognized (legally) as formal workers in the economy, as they do not fall under the protection of the law, and as a result, they do not enjoy labour rights that emanate as a result of being under the protection of the law (Chen, 2011:168). Part of the reasons why domestic work is not recognized as a formal job is because of the context in which it takes place, ie in the private home of the employer, away from the public eye. The isolated nature of the work perpetuates the prevalence of the verbal, physical, and sexual abuse which domestic workers are subjected to (Chen, 2011:169-170). Further, the racial and class disparities between the employer and the employee exacerbates the oppression and vulnerability of domestic workers, particularly those who are migrants (Chen, 2011:169-170).

The main findings of Chen's (2011) study were that domestic work is largely perceived as 'invisible' work, and this is owing to the isolated nature of the work. The implication of this is that domestic work is difficult to regulate (Chen, 2011:169-170). A further hurdle involved in regulating domestic work is the conceptual challenge. ie: there are disparities in the classification, definition and conceptualization of domestic work. There is no standard definition, classification or conceptualization of domestic work. This elusiveness with regards to how domestic work should be conceptualized, defined and classified, gives rise to a challenge when researchers have to decide what constitutes domestic work in official statistics. Moreover, collecting and categorizing data becomes a challenge (Chen, 2011:176). Furthermore, the employment of domestic workers is largely informal in the sense that the agreements on their terms of employment are not legally monitored or protected (Chen, 200:174). Therefore, most notably, a large number of domestic workers are unaccounted for in terms of official employment statistics and they are not organized (Chen, 2011:174).

The literature on the working conditions of domestic workers also sheds light on the prevalence of discrimination faced by domestic workers. The discrimination is usually based on gender and race. In the case of migrant domestic workers, they face a secondary discrimination based on citizenship (Oelz, 2014:143-144). This discrimination has informed the perceptions and social attitudes which society has of domestic work as a labour sector. It has further informed some of the reasons why domestic workers have been excluded in the labour laws and have not enjoyed the same labour rights as other employees in the economy. This state of affairs is a direct consequence of society's negative perceptions of domestic workers (Oelz, 2014:144).

(ii) International regulation of domestic work

The increased awareness of the prevalence of abuse and exploitation faced by domestic workers at work, injected a sense of urgency into the need for the sector to be regulated (Oelz, 2014:145). Consequently, the introduction of Convention No. 189 and Recommendation 201 in 2011 in a bid to provide a global minimum standard for the regulation of domestic work internationally, has had a positive impact in the steps taken towards humanizing domestic work (Oelz, 2014:144). Convention No. 189 is a treaty of the International Labour Organization which regulates domestic work internationally. It is legally binding for countries which are member

states of the ILO (I.L.O, 2012). Recommendation 201, however, is not legally binding, it is merely a tool that provides guidelines for the strengthening of national law and policies on domestic work (I.L.O, 2012). Recommendation 201 is meant to guide the member-states' actions in the implementation of Convention 189. The inception of Convention No. 189 and Recommendation 201 demonstrate that policy-makers are starting to realize the economic and social value of domestic work, and the need to establish the necessary structures that will facilitate domestic workers' protection in the workplace (Oelz, 2014:144).

Nonetheless, Oelz (2014:145) still draws attention to the fact that owing to the isolated and individualized nature of domestic work, the inception of Convention No. 189 and Recommendation 201 do not guarantee that domestic workers will not be victims of abuse at work because both the domestic worker and their employer may be unaware of the existence of these laws and the rights that empower domestic workers. Therefore, despite the ratification of these treaties by the International Labour Organization (I.L.O) being a landmark achievement, the hurdle which is now faced is the implementation of the provisions of these treaties (Oelz, 2014:169). Although legislative reform is necessary, it is not a sufficient condition to bring about improved working conditions on its own (Oelz, 2014:169). Since the regulation of these treaties is in its developmental stage, the sharing of results and experiences between countries will be imperative in the first few years, so that states can learn from the experiences of each other in order to collectively decide the most effective way of implementing these laws (Oelz, 2014:169).

2.3 Regional Studies on domestic workers

A regional study conducted by the Social Security and Social Protection of Migrants in SADC and South Africa, which focused on migrant workers in South Africa; found that migrants who work as domestic workers in South Africa were far more vulnerable and likely to experience exploitation, and have poorer working conditions than their South African national counterparts (Deacon et al, 2014). Their vulnerability is perpetuated by the fact that although they have higher educational qualifications than their South African counterparts, they still struggle to find employment in the fields they have studied for (Deacon et al, 2014). Further, the study found that there is a number of employers who prefer hiring non-South Africans as domestic workers because they believe that they are more hard working than their South African counterparts, and

are willing to work for less money than them (Deacon et al, 2014). When domestic workers were asked about how they felt about their working conditions, many of them felt helpless to change them, and thought this was largely due to the fact that they are already vulnerable as foreigners and are more desperate for jobs than South Africans in general (Deacon et al, 2014).

2.4 National Studies on domestic workers

In 2002 Russell (2002:2-5) drew attention to the fact that the Department of Labour in their *Domestic Workers' Report* in 2001 noted that there was inadequate research and contemporary data on domestic workers in South Africa (Russell, 2002:5). Since then, studies on domestic workers have gradually increased, however it is still a topic with a relatively limited body of literature. This section of the literature review will focus on studies carried out after the promulgation of SD7 in 2002 by the Minister of Labour in order to look at domestic workers' lived realities at work after the promulgation of SD7.

This literature review will not include studies conducted prior to the inception of SD7 as the background to this study has already depicted a picture of the working conditions that existed then which ultimately led to the promulgation of SD7 in 2002, in an effort to improve the working conditions of domestic workers in South Africa. The section will only provide a brief background explaining the rationale behind the introduction of SD7 in 2002 and a brief discussion of some of the provisions of the Act.

Fish (2006) argues that the urgency for legislative reform in the domestic labour field was apparent prior to the inception of SD7 because, amongst other mitigating factors, despite there being a large number of domestic workers in South Africa, domestic workers still lacked sufficient bargaining power to fight for reform on their own. This lack of sufficient bargaining power meant that domestic workers were not empowered to fight for their basic human rights to be respected in the workplace in cases where their rights were infringed upon. The call for the regulation of the sector came from church organizations, women's organizations and trade unions (Fish, 2006:108).

In a bid to redress the imbalances in the relationship between domestic workers and their employees, Sectoral Determination 7 was promulgated in 2002 stipulating minimum wages and

employment standards for this sector (Ally, 2008). It requires employers to register their domestic workers with the Unemployment Insurance Fund (UIF) and to pay the required contribution to the UIF (SD7; RSA 2002). SD7 sets the minimum wage for domestic workers at two regional levels designated area A and B. Area A is municipalities in urban areas and area B, those in rural areas. Area A is required to pay higher wages because it is believed that the income is higher in urban areas. Area B is required to pay lesser wages because it is believed rural income is less than urban income.

The implementation of SD7 by the South African government is a proactive step that was taken in order to empower workers in one of the most vulnerable and neglected labour sectors globally, i.e. domestic work. The provisions of SD7 are in line with international labour law standards for this sector, as they correspond with the provisions of Convention 189 of the International Labour Organisation. Convention 189 is a treaty that provides for the regulation of standards of domestic work, and the rights of domestic workers globally. It was ratified in 2011 (I.L.O., 2012). Further, S.D.7 is a law implemented in line with section 23 (1) of the South African Constitution and the Labour Relations Act 66 of 1995, which make provision for all citizens of the country to have rights to "fair labour practices." Also, the Employment Equity Act No. 55 of 1998 makes provision for all workers' rights to equality and stipulates that workers should not be unfairly discriminated against in the workplace (du Toit, 2013).

Studies conducted by Dhlamini & Murray (2009) in Pietermaritzburg found that the attitudes of employers to their domestic workers, and vice versa had not shifted significantly post-apartheid. Both parties largely related to each other on a "master and servant" basis. Similarly, du Toit (2012) found that domestic workers still felt afraid to negotiate contracts of employment with their employers, even with the inception of SD7, which is meant to empower them to do so. This corresponds with the findings of du Toit's (2013) study which found that legislation in the domestic labour field, for the most part, had little impact in effecting meaningful changes in the working conditions of domestic workers. Evidently, Dhlamini & Murray (2009) also concluded that the enforcement and monitoring of legislation in this sector perpetuates the challenges faced in this chapter.

Contrary to the findings of Dhlamini & Murray (2009), Du Toit (2012) and Du Toit (2013), a study carried out by Dinkelman et al (2014) found some improvements in the material conditions of domestic workers. Dinkelman et al (2014) found that with inception of S.D.7, the average pay of domestic workers has improved significantly. The number of domestic workers who have a formal employment contract and contribute to the Unemployment Insurance Fund have increased. However, the drawbacks are that there have been low levels of compliance on the side of employers, a poor monitoring system, and the penalty for non-compliance is not punitive enough on the side of the Labour Department as it does not encourage deterrence (Dinkelman et al, 2015). This shortfall by government is owing to the fact that it lacks resources to monitor a wider group of households than it currently does (Dinkelman et al, 2015).

Bosch & Mcleod (2015) conducted a study in Cape Town with domestic workers and their employers, which found that the racial and gender profile in the field; black women working for white families, perpetuates and reinforces the perception that domestic work is work suitable for black women (Bosch & Mcleod, 2015). Further, the study found that the power imbalances between the domestic worker and their employer, is a microcosm of the socio-economic challenges that continue to plague South Africa today (Bosch & Mcleod, 2015). More than twenty years since the demise of apartheid in South Africa, the majority of economic wealth is still in the hands of the white minority population, who own 79% of the country's land, while the overwhelming black majority of South African citizens have not experienced a meaningful positive change in their lived realities with the birth of democracy. The majority of South African citizens remain at the periphery of the economic activity of the country (Nhlapho, 2015).

Marias & van Wyk's (2015) study focused on women who had a history of females in their families working as domestic workers. The study wanted to probe why women seldom make attempts to get out of this sector, given that the conditions under which they work are unfavourable, i.e. long working hours, poor pay, and they are undervalued by their employers (Marais & van Wyk, 2015). The research found that due to these women lacking adequate formal education and barely possessing any skills for the labour market, which is already competitive even for skilled workers, they ended up being trapped in their jobs as domestic workers, and also

therefore, trapped in the cycle of exploitation, vulnerability and hopelessness (Marais & van Wyk, 2015).

Du Preez et al (2010; 396) argue that SD7 is not sufficient to effectively regulate domestic work in South Africa and afford rights to domestic workers which they were previously denied, because it fails to recognize the power disparities that exist in this relationship, which enables exploitation to continue. SD7 only takes into consideration the apartheid legacy as influencing the inequality and exploitation between domestic workers and their employers. However, apart from the apartheid legacy, there still exists a power disparity between domestic workers and their employers. This power disparity is owing to the fact that there is a surplus of unskilled labour in South Africa and domestic workers lack skills to leave the sector and look for better employment activities (Durrheim et al, 2011:9)

Marais (2014) argues that given the history of apartheid in South Africa, expecting that the inception of S.D.7 will automatically solve the issue of the power disparity in this sector is wishful thinking. The regulation of this sector will have to include domestic workers in the improving of this legislation, because their knowledge of it will affect the extent to which it is able to change the material conditions of domestic workers (Marais, 2014).

Du Toit's (2010) study echoed similar sentiments as that of Du Preez et al (2010) in that the law on its own is not sufficient to bring about the necessary changes that will result in domestic workers having improved working conditions. Du Toit (2010:207) argues that legislation alone will not alter the political and socio-economic circumstances which engender inequality. However, in the steps that are taken to redress this issue, the law needs to form the foundation which will guide the process (Du Toit, 2010:207). Further, the law makers must have a dialogue with both employers of domestic workers and domestic workers themselves (Du Toit, 2010:207).

Du Toit (2010:208) further argued that one of the major challenges faced by domestic workers is the inequality which characterizes domestic work. The characteristics peculiar to the sector are that domestic workers are mainly women, unorganized and for the most part, their employment is not formal. These findings correspond with those of Chen (2011) who identified the same

characteristics of domestic work (globally) as Du Toit (2010) and recognized these peculiarities as perpetuating the challenges faced by domestic workers. These factors result in domestic workers working in extremely poor working conditions as a result of forms of inequality which are interrelated, ie: them being women leads to discrimination based on gender. Also, the terms of employment are often unilaterally determined by the employer (Du Toit, 2010:208-209). This state of affairs perpetuates the grim conditions which domestic workers work under (Du Toit, 2010:210). Over and above this, the way in which the labour market in general is structured exacerbates the state of affairs of domestic workers. The labour market is a buyers' market more than it is a sellers' market (Du Toit, 2010:210).

It is imperative to realize that the law operates within a context in society, and it is relegated to a secondary role relative *vis-a-vis* power. This does not necessarily mean that the law is futile, however, it becomes a serious problem when employees cannot negotiate the terms of their work contracts (Du Toit, 2010:210). If employees cannot negotiate the terms of their contracts, it would mean that they might not be able to insist that stubborn employers obey the law. It is for this reason that the organization of domestic workers becomes a key factor in ensuring compliance (Du Toit, 2010:210).

Bhorat et al (2015) did an empirical study investigating the impact of a minimum wage regulation on employment, and the level of compliance with such a policy in a developing country. The study focused on the minimum wage regulation in the agricultural sector. Labour laws in South Africa are monitored through random inspections conducted by inspectors from DoL. The study found that non-compliance carries a penalty of a fine and repeat offenders, together with those employers who significantly under pay employees pay large penalties, however the value of the fines is significantly low (Bhorat et al, 2015:7-12) In 2014, the most an employer would be fined for non-compliance was R500 per employee (Bhorat et al, 2015:7-12).

A challenge that was faced with the enforcement of this minimum wage, was the scarcity of resources. Due to it, the inspection rate was low. There are only a few inspectors. The DoL also used mechanisms such as advertising, advocacy and training programmes to ensure that employers complied. DoL made a deliberate attempt to make the law visible and raise social

awareness on the wage determination (Bhorat et al, 2015:7-12). The main findings of the study were that the minimum wage achieved partial compliance. The introduction of the minimum wage did result in an increase in the wages that employees were being paid, however it was not up to the minimum wage determined. The minimum wage enjoyed a positive response from the employers, however, they made a decision about the degree to which they chose to comply with the law (Bhorat et al, 2015:7-12). The challenges which the minimum wage determination in the agricultural sector faces, gives us an idea of the kinds of challenges which SD7 is likely to face. Therefore, the findings of Bhorat et al's study can be used to understand the challenges associated with a sectoral determination in general.

2.5 Conclusion

The common thread in the body of literature on domestic work research is that the studies reveal that domestic work is a vulnerable labour sector globally. Further, domestic workers are mainly women, and due to the isolated and individualized nature of the job, domestic workers are unorganized. Additionally, due to the environment in which domestic work takes place ie: in the private home of the employer, a large part of society does not view domestic work as being 'real work' which explains why the sector was unregulated for a long time by governments around the world. Regulating domestic work was seen as amounting to interference in domestic affairs. In the absence of laws protecting domestic workers, many of them did not have employment contracts and this further perpetuated their poor working conditions, and resulted in them being unable to fight unfair labour practices.

The promulgation of SD7 in 2002 was meant to bring domestic workers under the protection of the law in order to improve their working conditions, by affording them labour rights which would elevate to human rights. Studies conducted on the impact of SD7 show that the act has to some extent enjoyed positive results, however, the successes of SD7 are limited by the peculiarities of the sector, mainly, the power imbalance between the workers and employers. Many studies have found that the power imbalance, and surplus of skilled labour in the country have a significant impact on the extent to which domestic workers are vulnerable.

There has been a gap in the literature on studies that look at how the manner in which SD7 is implemented affects the extent to which it is successful. Literature on the impact of SD7 has focused almost exclusively on how the power imbalance between domestic workers and their employees, prevents domestic workers from enjoying the provisions of SD7. Therefore, this study seeks to investigate the extent to which domestic workers are aware of their labour rights, and their experiences of their working conditions, and examines how this affects the implementation of SD7. The study will further look at how the behaviour of implementing agents of SD7, such as DoL staff, affects the implementation of SD7 and its effectiveness in improving the working conditions of domestic workers.

A study establishing the impact of SD7 is necessary in order to identify potential extension measures appropriate for the regulation of domestic work and other groups of unorganized and/or unregulated employees. Additionally, such a study will raise the profile of domestic work to highlight and mainstream domestic work in the economy. Further, such a study will strengthen democracy in the private sphere by empowering domestic workers. Finally, this study is necessary because by providing relevant, contemporary data and knowledge about the sector, it will enable domestic workers to participate in finding new means to bring about improvement in their conditions of employment and levels of organization.

CHAPTER 3: THEORETICAL AND CONCEPTUAL FRAMEWORK

3.1 Introduction

This chapter presents and discusses the conceptual and theoretical frameworks of the study. The chapter discusses Policy Implementation Theory and the factors which affect the extent to which policy implementation meets its intended objectives, as identified. It also discusses the factors affecting policy implementation effectiveness with specific reference to the implementation of regulatory policy. This study will use implementation theory to analyze the challenges associated with the implementation of S.D.7.

The chapter then presents Galbraith's (1983) conception of power; it identifies and discusses the three instruments/types of power which Galbraith identifies, and then links the types of power to the sources of power. The chapter also presents an argument on the significance of bargaining in the workplace by Wellington and Winter Jr (1969). Power is used in order to analyze the power dynamics inherent the relationship between domestic workers and their employers.

3.2 Policy Implementation Theory

3.2.1 Public Policy

Public policy may be defined as a manual by government, which sets out the action, or inaction, which government plans to take in order to resolve a problem or condition in society (Anderson, 1997:8-9). Thus, public policy is channelled towards achieving a specified objective, rendering it purposive (Lindblom & Woodhouse, 1993:44). The process which public policy follows has five main stages namely; (1) problem identification, (2) agenda setting, (3) decision-making, (4) implementation, and (5) evaluation (Jann & Wegrich, 2007:43). This study will focus on the policy implementation stage.

3.2.2 Conceptualizing Policy Implementation

Parsons (1995:462) argues that there is no single definition of policy implementation as there are various ways of defining the concept. Cloete & de Coning (2011:135) argue that policy implementation may be defined as the process through which policy decisions are operationalized as it is essentially about putting decisions into effect. This definition of policy implementation resonates with that of Howlett & Ramesh (1995) who define policy implementation as a task in which policies or programs are executed and policy strategies are executed (Howlett & Ramesh, 1995:153).

Dye argues that policy is not limited to action only, however inaction can also be a policy decision. As a result, he defines public policy as “whatever governments choose to do or not to do” (Dye, 1982:2). Colebatch (2006:311) argues that the implementation process is multi-dimensional and not linear as is often implied in policy documents. The argument here is that policy implementation in practice does not necessarily begin with a problem, and then move to decisions being made on how to deal with the problem, and end with solutions addressing the problem being implemented (Colebatch, 2006:312). The process of policy implementation in the policy cycle is located after policy design (Skok, 1995: 326).

3.2.3 Types of Public Policies

There are various types of policies, with different purposes. They include: substantive, procedural, distributive, regulatory and redistributive policies (Anderson, 1997). Policies are primarily distinguished as either being substantive or procedural. The function of substantive policies is to set out how government plans to deal with a certain problem or condition in society (Anderson, 1997:14). Procedural policies are concerned with setting out how government plans to deal with a certain issue (Anderson, 1997:14).

Distributive policies are concerned with the appropriation of resources in society; they determine which segments of the society are to benefit from specific policies and to what extent (Anderson, 1997:15). Redistributive policies seek to redress imbalances in society through purposive actions by government to change the status quo, by shifting the allocation of resources to benefit those groups of people who are most in need of the benefits that are being accrued by government

(Anderson, 1997:18). The function of regulatory policies is to guide the behaviour of individuals or groups in society, by stipulating what can or cannot be done with regards to a particular issue or condition (Anderson, 1997:16).

SD7 is a sectoral determination of the Basic Conditions of Employment Act 75 of 1997 which seeks to regulate the working conditions of domestic workers, by determining a national yardstick for minimum wage setting in the sector, working hours per week, calculation of overtime, the provision of leave and the conditions under which a contract may be terminated, as well as the protocol that needs to be observed when terminating a contract (SD7; R.S.A. 2002).

3.2.4 Factors that influence successful implementation of public policy

Hood (1976) in Parsons (1995:465) identified five factors which could lead to effective policy implementation:

- Perfect implementation happens as a result of a single organization which mimics an army, and has apparent margins of authority; this condition puts forward an argument for a top down approach to implementation, where it is important for people to know who the head of implementation is, as well as who they report to. This is done so that all the actors involved in the implementation process are aware of their duties and thus the likelihood of confusion arising with regards to the duties of employers involved in the policy process is reduced.
- standards must be imposed and goals given; a simple strategy for the implementation should be set out. Moreover, it should be straightforward to the extent that all employees who form part of the implementation team know the objectives of a policy or programme, and can be mindful of these objectives for the duration of the implementation process, in order for them to be able to notice any faults during implementation.
- That people simply follow instructions, with explicit regulations and a strong hierarchy where all employees have a duty assigned to them which does not clash with any other employee's duty.
- That there should be optimum dialogue within and between divisions of an institution in order for an implementation plan of an institution to be effective, and for the public to receive the policy or programme, it needs to have been discussed by both the staff in an institution and the general public. In order for implementation to be effective, the public

must be aware of the issue which a policy is seeking to address and also how the policy aims to combat the issue, and the impact which this intervention will have in the lives of members of the public.

- That there would be no constraints as a result of limited time; it would be more beneficial for policy makers not set a time frame for the implementation of policy, as doing so does not allow government enough time to monitor the impact which the policy is having on the target population, or within government itself. For government to be able to fulfill this objective, the implementation process should be monitored over a longer period of time.

Colebatch (2006:311) argues that more often than not, there is a divergence between policy implementation on paper and in practice. The reason for this is that implementation on paper often represents the ideal, however in reality there are various circumstances which prevent the policy implementers from achieving it (Colebatch, 2006:311). The circumstances which shape the way in which a policy is implemented are discussed below.

Brynard (2005:656) argues that the content of a policy is important, not only in the strategies it uses to achieve its objectives, but also in its stating of the objectives, in and of themselves, and how it aims to go about achieving those objectives (Brynard, 2005:659). This argument is in consonance with the statement which Pressman and Wildavsky made about implementation; it is an activity between determining objectives and taking proactive action to achieve those objectives (Brynard, 2005:659).

The context in which policy implementation takes place will be influenced by the larger context of the social, political, economic and legal environment in society (Brynard, 2005:659). This does not necessarily mean that the broader context must be disregarded, however we must be cognizant of how this affects the implementation process, most importantly through the institutional hallways through which implementation must pass and the endorsement of clients and coalitions (Brynard, 2005:659). Bargaining, cajoling, accommodation, threats, gestures of respect, and related transactions often lead to successful working relations (Brynard, 2005:659). Agencies with no formal connections may create effective working relations (Brynard, 2005:659), meaning that administrative contexts which are conducive to implementation, are

regularly born out of interactions amongst humans, rather than hierarchical regulation (Warwick, 1982:188 in Brynard, 2005:659).

Brynard, defines capacity as the structural, functional and cultural ability to put into effect the policy goals of the government (Brynard, 2005:660). In essence, it is about the ability of government to deliver public services, for the betterment of society, according to the timeline which government sets out (Brynard, 2005:660). Capacity is a direct reference to the tangible resources, be they in the form of material, financial, human, technological, logistical, available at the disposal of government (Brynard, 2005:660). Capacity also refers to other intangible attributes needed to operationalize policies; such as: commitment, motivation, endurance and the like (Brynard, 2005:660). In addition to government having the capacity to implement policies, the political, administrative, economic, technological, cultural, and social environment must facilitate successful policy implementation (Brynard, 2005:660).

A challenge which most institutions face when it comes to capacity, is the fact that it is a political issue more than it is a logistical one (Brynard, 2005:661). Similarly, implementation is also political to a certain extent because the distribution of resources, raises “questions of *who gets what, when, how, where, and from whom*” (Brynard, 2005:661). Therefore, the answer to the question of what capacity is needed to implement a policy is not limited to the ability which a government has, but expands to include the political will of the government for the policy to succeed (Brynard, 2005:661). In accordance with this argument, Hill (2003:267) also noted that the resources allocated to the implementation of a policy will affect the extent to which its implementation yields its intended results.

Clients and coalition speak to the importance of government forging coalitions of interest groups and thought leaders, as well as other non-state actors who advocate for the implementation of a specific policy (Brynard, 2005:661). Policies that enjoy the support of their constituents are likely to be stable and enjoy successful implementation. Whereas policies that face opposition are likely to have their implementation process disrupted, challenged or sabotaged (Brynard, 2005:661-662). Similarly, Hill (2003:267) holds that implementation success is also impacted by the behaviour of groups who are affected by the policy.

3.2.5 Implementation of Regulatory policy

The Organization for Economic Cooperation and Development (OECD) argues that if governments want to improve the effectiveness of regulatory policies, they need to have an in-depth understanding of the context in which that policy is operational (OECD, 2000:10). Moreover, in order to achieve the necessary level of understanding of the context, policy makers need to take into account the following determinants (OECD, 2000:10):

- The features inherent in the market place
- The way in which different institutions are structured and the process which they follow when making decisions
- Consider the types of incentives which the intended beneficiaries and organizations are likely to be motivated by and as a result, act in accordance with the regulation
- The factors which impede compliance.

3.2.5.1 Tools for implementing regulatory policy

Regulatory policies are put in place in order to shape the behaviour of individuals within a specific context (Schneider & Ingram, 1990:513). Therefore, regulatory policy seeks to influence citizens to act in accordance with its provisions. Policy tools are therefore the mechanisms which governments employ in order to tackle the challenges they face in trying to shape the behaviour of citizens in a specific context (Schneider & Ingram, 1990:514).

Policy tools use meaningful and moralistic rules to shape perceptions or values. Further, policy tools may advocate for learning in a bid to reduce ambiguity in the provisions of legislation (Schneider & Ingram, 1990:514).

Authority tools are statements which are supported by the legitimate authority of government that either permit, prohibit or require action under specific conditions (Schneider & Ingram, 1990:514). Authority tools are often used in top-down systems of government to regulate the behaviour of agents and officials at different levels. In some instances, such tools can extend to citizens (Schneider & Ingram, 1990:514). The rationale behind using such tools is that people are driven by a commitment to uphold the rule of law without the use of incentives (Schneider & Ingram, 1990:514).

Incentive tools rely on positive and negative concrete rewards to achieve compliance (Schneider & Ingram, 1990:515). Incentive tools assume that individuals are not naturally inclined to act in

line with policy stipulations unless they are influenced, encouraged, or forced by manipulation of money, freedom or other concrete rewards (Schneider & Ingram, 1990:515). Sanctions are the main tool used to enforce criminal and civil laws. The aim is to eradicate or reduce the prevalence of specific behaviour by punishing delinquents, in proportion to their misdemeanours by subjecting them to either fines, imprisonment and the like (Schneider & Ingram, 1990:515). The rationale behind this policy tool has its foundation in classical deterrence theory which assumes that individuals respond to the severity, certainty and speed of punishment (Schneider & Ingram, 1990:515).

Capacity tools provide information, training, education, and resources to allow individuals and groups to make decisions in line with a policy (Schneider & Ingram, 1990:517). The assumption behind employing these types of tools is that incentives may not be an issue, but the root of the problem of non-compliance may stem from lack of information, skills, or other resources needed to make decisions that are in line with policy objectives (Schneider & Ingram, 1990:517).

The assumption behind symbolic and hortatory tools is that the way in which people perceive a policy and the way they behave in accordance to, or in contrast of a policy, is shaped by their beliefs and values (Schneider & Ingram, 1990:519). Such tools do not use incentives or authority to gain compliance, but seek to speak to the core beliefs of individuals so that individuals are self-motivated to comply with the legislation (Schneider & Ingram, 1990:519). These tools are often used to change perceptions about abstract goals such as equality, fairness and the like. Symbolic and hortatory policies assume that people develop preferences with ideas that are line with their religion or culture, therefore if a policy's objective is line with their core belief, they are likely to be self-motivated to comply with the legislation (Schneider & Ingram, 1990:520-521).

3.2.5.2 Factors impacting effective regulatory policies

In order for a regulatory policy to be effective, there are a few preconditions which need to be met. Firstly, the target group must be aware of the regulation and they have to understand it. Secondly, the target group has to be willing to comply with the provisions of the regulation policy. Finally, the target group must be able to comply with the policy (OECD, 2000:11). Concomitantly, Scholz (1991) argues that interest group theory can be used to understand the factors that shape how the implementation of a regulatory policy unfolds (Scholz, 1991:120). The argument of interest group theory is that groups who reap the material benefits from

compliance with a regulatory policy will work hard to ensure that a policy achieves a high rate of compliance (Scholz, 1991:120). In contrast, groups who are subject to enforcement are unlikely to advocate for high levels of compliance and effectiveness of such a policy (Scholz, 1991:120).

Sutinen & Kuperan (1999:175) argue that the most effective mechanism that can be used to increase compliance with a regulatory policy is the threat of sanctions against non-compliance. Sutinen & Kuperan (1999) use two theories from Sociology on compliance to explain the main reasons influencing the reasons behind compliance with policy. The instrumental perspective sees people's actions as being motivated by self-interest. This perspective holds that individuals' actions will be shaped by the material incentives and sanctions associated with specific behaviour (Sutinen & Kuperan, 1999:179). The main determinants influencing compliance are the brutality and surety of the sanctions (Sutinen & Kuperan, 1999:179).

The normative perspective focuses on individuals' views on morality. It holds that individuals will comply with a policy to the extent which they view the policy as appropriate and in line with the norms they embody (Sutinen & Kuperan, 1999:179). The key determinants influencing compliance are the views that people hold about fairness and suitability of the law and its systems (Sutinen & Kuperan, 1999:179). Essentially this perspective emphasizes that legitimacy influences compliance and that in order for a regulation to enjoy high levels of compliance, the regulation needs to make sense to the targets (Sutinen & Kuperan, 1999:186). Further, individual compliance is expected to be influenced by the behaviour of other people in society through the nature and degree of social influence exercised in the community (Sutinen & Kuperan, 1999:184).

The level of compliance which a regulatory policy enjoys is largely influenced by the extent to which the various determinants of the target population "interact with the design and quality of the regulation" (OECD, 2000:10). In this context, a regulation is perceived as a unit which is part of a broader system, and the role of the regulation is to produce incentives to entice private actors to act in line with its provisions. Governments often struggle to achieve this goal when they have to match up with very influential institutional, market, and cultural incentives (OECD, 2000:10). As a result, it is not always feasible to achieve complete compliance with a regulatory policy (OECD, 2000:11).

In light of the fact that it is not always feasible to achieve complete compliance with regulatory policies, governments will have to be satisfied with a reasonable extent of (non) compliance (OECD, 2000:11). This is owing to the fact that the level of compliance which a regulatory policy achieves is largely influenced by other factors such as the context in which it operates and the types of risks which result from failure to comply with the regulation (OECD, 2000: 11).

As a means to determine an acceptable degree of non-compliance, law makers firstly need to be cognizant of the gravity of non-compliance, and the degree to which failure to comply impacts the extent to which policy objectives can be met (OECD, 2000:11). Secondly, law makers should clearly spell out what kinds of actions constitute “serious offences” in the field of social policy. Finally, the voice of the public can significantly shape the answers to the first two issues. This is as a result of problems being a social construct (OECD, 2000:11). A state of affairs may exist for a long time and not be perceived as an issue, but over time the perception of the same state of affairs may change and it may be seen as a problem (OECD, 2000:11).

For instance, enforcement agents tend to impose harsher sanctions for non-compliance in cases where an omission is publicized by the media, even in instances where the omission is the exception rather than the norm (OECD, 2000:11). Further, in most instances, the statistics of the levels of (non) compliance are unknown. It is then the media who fill in the knowledge gap pertaining to these statistics by drawing the attention of government to such issues (OECD, 2000:11).

3.2.5.3 Challenges for the implementation of regulatory policy

Failure to monitor compliance with a policy is likely to reduce levels of compliance (OECD, 2000:19). Random inspections are likely to influence people towards compliance. Whilst on the other hand, if monitoring is reduced to merely being a routine exercise, it is unlikely to contribute to the improvement of compliance levels (OECD, 2000:19). Similarly, Schneider & Ingram (1990) argue that in cases where there may be inadequate incentives, and there is a lack of capacity to take the necessary action against people who fail to comply with a policy, the implementation of a regulatory policy in such an environment is likely to be elusive (Schneider & Ingram, 1990:514).

When government sanctions are not harsh enough, and they do not have any significant adverse consequences for delinquents, they fail to deter more citizens from failing to comply with the law

(OECD, 2000:20). More often than not, owing to a lack of resources and the absence of a plan of action for the enforcement and monitoring of a policy, the prospects of non-compliance being detected are minimal. Further, the prospects of monitoring being done are also slim in such cases (OECD, 2000:20). In cases where people believe non-compliance is unlikely to be detected, let alone punished, sanctions do not serve as a deterrence mechanism (OECD, 2000:20). This argument resonates with that of Scholz (1984:386-388) who argued that in order for regulatory policy to be effective, government must have a clear plan of enforcement, because the main challenge with regulatory policy is that inspections on compliance are not done regularly and such inspections do not work obtrusively (Scholz, 1984:387-888). Moreover, a further impediment to the effective implementation of regulatory policy is that when sanctions are given they are often not punitive to the extent that they become sufficient to deter non-compliant behaviour (Scholz, 1984:388).

3.3 Street-Level Bureaucracy

Lipsky (1980:4-8) defines street-level bureaucrats as the people who form the link between citizens and government. Street-level bureaucrats are public servants. Street-level bureaucrats are the implementing agents; the people who put government policies into practice. Therefore street-level bureaucrats play a critical role for citizens because whatever the street-level bureaucrat delivers to the citizens, is that which the citizens get from government (Lipsky, 1980).

Lipsky (1980:8-12) further argues that theory and reality are different, in that what is learnt in training is different to the situation street-level bureaucrats encounter on the ground. On the job, they have to take whatever they have learned, and apply it relatively quickly and without much information to a particular situation. Hence, for this very reason, street-level bureaucrats have to find strategies to help them cope with the challenges they face in doing their jobs effectively. Consequently, street-level bureaucrats develop their own strategies to minimize the challenges they face in their jobs and cope, as well as perform better. As a result, Lipsky (1980) argues that, "in a way, street-level bureaucrats are the ultimate policy makers" (Lipsky, 1980). Lipsky identifies a few traits which shape the manner in which street-level bureaucrats implement policy, and make it indirectly as they are implementing it. These traits will be discussed below.

3.3.1 Discretion and Street-level bureaucrats

While Lipsky does not provide a definitive explanation of what discretion means in his book, *Street-Level Bureaucracy: Dilemmas of Individuals in Public Service* (1980). Hupe & Hill (2006:281) quote Davis's (1969) definition of discretion. Discretion is said to be exercised by a public official when "the effective limits on his power leave him free to make a choice among possible courses of action and inaction" (Davis, 1969:4 in Hupe & Hill, 2006:281). This definition of discretion demonstrates that even when officials choose not to take any form action, it is still an example of them exercising discretion as to how to do their job. The work environment in which street-level bureaucrats find themselves in; lack of sufficient resources and unconducive working conditions coerce them into using their discretion in order to deal with the pressures they face on the ground whilst doing their jobs (Lipsky, 1980:14-16). As a result, street-level bureaucrats find ways to simplify the basic features of their jobs and develop routines that in some way, still help them do a good job (Lipsky, 1980).

Lipsky argues that street-level bureaucrats are not aware of the large extent to which they have freedom of discretion and autonomy in how they do their jobs (Lipsky, 1980:181). Instead, they view the workplace as being routinized and restrictive (Lipsky, 1980:181). Yet they determine the quality and quantity of services which citizens receive from government, as they form the border between government and ordinary citizens (Lipsky, 1980:181). Owing to this, Lipsky (1980:15) identifies three reasons that demonstrate why it is necessary for street-level bureaucrats to have degrees of discretion in their job:

- (a) Street-level bureaucrats often have to respond to the needs of citizens within a limited amount of time, and with limited information available to them, to base a decision on
- (b) The environment in which street-level bureaucrats work in is a complex one, and need not be made more complex by establishing fixed routines
- (c) The duty to apply discretion is vested in low level workers as they are the ones who are tasked with enforcing laws, and thus have direct contact with citizens.

The link between the street-level bureaucrat and citizens is therefore a crucial one, because street-level bureaucrats literally become the "face" of government (Lipsky, 1980:15-16). Winter (2002) validates this argument as he also argues that "most citizens do not read the law" (Winter, 2002:2) therefore, in the eyes of the citizens the behaviour of street-level bureaucrats and the

decisions they make pertaining to the way in which they deliver services is the law (Winter, 2002:2).

3.3.2 Vague goals and objectives

One of the biggest challenges which street-level bureaucrats face in their job, is the goals which are ambiguously stated in policy documents. This affects the success of the implementation of a policy (Lipsky, 1980:40). Furthermore, some policies are not realistic, and represent ideals rather than realistic goals which can be achieved. Such policies, which represent ideals and are not realistically achievable, cause bafflement and further complicate the already complicated job of the street-level bureaucrat, who is tasked with operationalizing policies (Lipsky, 1980:40).

There are cases where street-level bureaucrats will be in a predicament. The social role of their agency will be in contrast with their concern for citizens (their clients) (Lipsky, 1980:41). In an instance a street-level bureaucrat fails to counterbalance their own expectations, with those of society (Lipsky, 1980:41). The pivotal role which street-level bureaucrats play when exercising their discretion, is exemplified in cases where goals of a policy clash, or a policy document is ambiguous, street-level bureaucrats are likely to put first the goals of the client, rather than those of social engineering (Lipsky, 1980:41).

When there is friction between the goals of an organization and those people who street-level bureaucrats provide services to, the workers fall victim to internal conflict and experience goal ambiguity (Lipsky, 1980:41). Under such circumstances, street-level bureaucrats are not able to treat individual cases with the necessary diligence. A blanket approach is then used to deal with all types of cases, because an organization has limited resources (Lipsky, 1980:44). Furthermore, again, the burden rests upon the street-level bureaucrat to determine how to do their job, in such a way that the limited amount of resources available serves as large a constituent as possible. It is the duty of the street-level bureaucrat to figure out a way of doing their job to the best of their ability (Lipsky, 1980:45).

Against this backdrop, using Lipsky's (1980) Street-Level Bureaucracy theory, the study analyses the role of front line workers in policy implementation to understand the role played by implementing agencies (such as inspectors from the Department of Labour) in the implementation of SD7, particularly, how their actions impacts on beneficiaries.

3.4 Power

Over the last few years with the shift in public policy studies from ‘government’ to ‘governance,’ traditional vocabulary has been replaced by a new vocabulary, which to some degree has neglected the focus on power. The focus has shifted to emphasize the multiple stakeholders involved in public policy (Arts & Von Tatenhove, 2005:340). However, power is a concept which is central to political science. As Laswell argued, it is a key determining factor of the way in which power is structured, distributed and exercised (Arts & Von Tatenhove, 2005:340). Therefore, the concept of power is the key element to understanding and explaining policy practices (Arts & Von Tatenhove, 2005:340).

Power in its most general sense is understood as A, having power to convince B to do what B would otherwise not do (Galbraith, 1983:1-2). Galbraith focuses on the anatomy of power and argues that it has three sources and three instruments. He identifies the three sources of power as personality, property, and organization, and the three types of power as condign, compensatory and conditioned power (Galbraith, 1983).

3.4.1 Instruments/Types of Power

Condign and compensatory power

Galbraith (1983:14) argues that what distinguishes condign and compensatory power from conditioned power, is the fact that the exercise of condign and compensatory power is apparent, both to the party exercising the power, and the party that is giving in to the will of another party. What makes the exercise of condign and compensatory power overt, is the remuneration, or trade off that the party submitting their will receives (Galbraith, 1983:14).

The dissimilarity between condign and compensatory power is the difference between adverse and favourable reward (Galbraith, 1983:14). Condign power uses threat to achieve consent, whereas compensatory power offers a reward, or benefit, in exchange for consent (Galbraith, 1983:14).

Historically, condign power has been associated with physical punishment. However, Galbraith’s (1983) use of the concept is expanded to include power that is employed using any kind of inconvenient action or its threat. This includes lambasting, seizure of assets, issuing of fines and clear vilification by individuals or the community (Galbraith, 1983:15).

Conditioned Power

Economic and social development shifted society’s normative view from condign to compensatory power being viewed as the acceptable form of power (Galbraith, 1983:23).

Similarly, the normative view has shifted from compensatory power being viewed as the acceptable form of power, to conditioned power taking centre stage presently (Galbraith, 1983:23). Although condign and compensatory power is overt, conditioned power can be either explicit or implicit. Its exercise is not always obvious, or even conscious by both the party exercising the power, and the party being conditioned (Galbraith, 1983:24). Explicit conditioning speaks to deliberate actions taken to influence the behaviour of others, for instance, using education, advertising or persuasion to influence others (Galbraith, 1983:24). Implicit conditioning speaks to more subtle means of influencing the behaviour of others, such as using culture to shape beliefs (Galbraith, 1983:24). Nevertheless, the line between explicit and implicit conditioning may be blurred, as the two are not mutually exclusive. This means that explicit conditioning may, to some degree, have elements of implicit conditioning (Galbraith, 1983:24-25).

Social conditioning, even though subtle, is the most widespread type of power today (Galbraith, 1983:34). It has been normalized and is an essential component of life itself (Galbraith, 1983:34). Once an individual has been convinced to believe something, either through explicit or implicit conditioning, they believe that the belief stems from their own moral compass or self-thoughts. They are unaware that they are submitting to the will of another entity (Galbraith, 1983:35).

3.4.2 Sources of power

Sources of power are elements linked to the types or instruments of power, which explains the very thing (source) that allows a specific type of power to be wielded (Galbraith, 1983:38). It is argued that there are three sources of power: personality, property and organization. Moreover, each type of power can be matched with a source of power, which enables its exercise. However, though sources and instruments of power are matched, these matches are not mutually exclusive (Galbraith, 1983:38).

Property can be understood as income. It allows a person to purchase submission (Galbraith, 1983:38). Personality can be understood as leadership in the common reference, and organization which is a group of people with a common interest, working towards achieving a common goal (Galbraith, 1983: 40-42). This study will not focus on personality.

Property

Property is the most explicit source of power against personality and organization, because it allows party A to employ the most mainstream exercise of power, which is using persuasion to alter the will of party B, using money. For instance, the money which employers pay their employees is the source which allows employers to alter their employees' interests and behaviour (Galbraith, 1983:47). Property has a strong link to compensatory power (Galbraith, 1983:47).

Over the years the significance of property has declined, whilst that of organization has increased (Galbraith, 1983:48). The power which businesses and the state wielded through capital, now stems from organized alliances of individuals from government (Galbraith, 1983:48). Although the popularity of property as a source of power has declined in recent times, this should not result in it being viewed as insignificant because through compensatory power, it gains the compliance of millions of workers in the labour force (Galbraith, 1983:53). Furthermore, property plays a pivotal role in the buying of conditioned power. For instance; conditioning exercised through advertising, or even conditioning exercised through education (Galbraith, 1983:53).

Organisation

Scholars such as Charles E. Lindblom (1977) have argued that organization is the most critical source of power in the modern world (Galbraith, 1983:54). Further, Galbraith (1983:54) argues that the other two sources of power; personality and property are only effective when they are ratified by organization. Organization is often linked to property, and to a lesser degree personality (Galbraith, 1983:54).

An organization may be defined as a group of individuals working together to achieve a common objective (Galbraith, 1983:55). Examples of organizations include political parties, trade unions, government and the like (Galbraith, 1983:55-56). Galbraith (1983:56) argues that "organisation can have access to conditioned power." In its standard alliance with property, it gives access to compensatory power, and its present-day form allows access to conditioned power (Galbraith, 1983:56). In fact, most organizations are founded with the primary aim of exercising conditioned power (Galbraith, 1983:56).

There are three factors which affect the extent to which an organization can be effective as a source of power (Galbraith, 1983:56). Firstly, it is the organization's bimodal symmetry. The argument here is that an organization will gain compliance to its purposes, based on how it does so within the organization (Galbraith, 1983:56). In other words, the extent to which an

organization is powerful internally, will influence the extent to which it is powerful externally (Galbraith, 1983:56). Secondly, an organization's influence is shaped by its access to other sources of power (Galbraith, 1983:56). An organization which has "condign punishment, compensation, and conditioning power" at its disposal is a strong one (Galbraith, 1983:57). Finally, there is a strong link between the extent to which an organization is powerful and the scope of issues it advocates for (Galbraith, 1983:67). Organizations which have a wide scope of issues which they advocate for, tend to be weaker than organizations with a narrow scope (Galbraith, 1983:67-69).

3.4.3 Bargaining

Bargaining is a source of power which involves parties with conflicting interests exerting influence over each other in an effort to reach a compromise that will satisfy the demands of both parties. Bargaining in the workplace takes place between an employer and an employee (Albiston, 2005:11).

Wellington & Winter (1969:1112) argue that there are four main premises that explain the importance of bargaining in the workplace. Firstly, it is to achieve a degree of peace in the workplace, because bargaining meetings allow for both the employers and employees to share with each other, the challenges which they face.

Secondly, bargaining is a tool used to promote and strengthen democracy in the workplace, by allowing employees to play a role in their governance (Wellington & Winter, 1969:1112).

Thirdly, trade unions who participate in collective bargaining together with employees, are likely to also represent employees in the political sphere too. This is significant because representation at a political level through interest groups is one of the most important types of representations that one could have at an individual level. This is owing to the fact that, to a large extent, government actions are influenced by the demands of their constituent groups (Wellington & Winter, 1969:1112).

Finally, and most significantly, as a consequence to the viewpoint that there exists a power disparity between employers and employees, collective bargaining is therefore a necessary alternative to individual bargaining (Wellington & Winter, 1969:1112). Collective bargaining becomes an important way to protect individuals from exploitation by employers, as the labour market is one characterized by more supply than demand, thus positing power almost entirely in the hands of the employers, at the expense of the workers (Wellington & Winter, 1969:1112).

This resonates with Du Toit's (2010) argument, that the labour market is, to a large extent, a buyer's market, more than a seller's market (Du Toit, 2010:210).

The significance of Power as a framework for this study is informed by the fact that it adequately captures the power dynamics inherent in the relationship between domestic workers and their employers. For instance, employers of domestic worker have access to property (money) as a source of power, which they use to employ compensatory power; which is exercised when they pay domestic workers a wage for their services. The power dynamics in the relationship between domestic workers and their employees is further perpetuated by the fact that the domestic worker sector has poor levels of organisation, owing to the nature of domestic work. ie: it is isolated and individualized. As a result, collective bargaining power is lacking, as the sector is characterized by weak organisation.

3.5 Conclusion

In conclusion, this chapter has presented the conceptual and theoretical frameworks of the study. The chapter has discussed the conceptions of policy implementation, as well as the factors that can affect its success or failure. These factors include the resources, in terms of human, capital and the like, which are allocated to a policy, the type of policy which is being implemented and the environment in which it is being implemented. It has also discussed the challenges involved in implementing regulatory policy specifically. The main challenges with implementing regulatory policy are monitoring and ensuring compliance as well as imposing sanctions which are harsh enough to deter non-compliant behaviour.

The chapter also discussed the policy instruments that are used in regulatory policy in order to enforce the policy and gain compliance. Policy tools such as incentives use either positive or negative rewards to gain compliance with a policy, whereas authority prohibits or restricts specific behaviour under certain conditions. Finally, under implementation theory, the chapter has also discussed Lipsky's theory of Street-Level Bureaucracy which explained the role which implementing agents play in the implementation of public policy, and the large extent to which their actions affect the way in which citizens experience the delivery of a policy.

The conceptual framework of the study identified and discussed Galbraith's instruments/types of power, and linked them to the sources of power which he identifies. Further, it discussed the importance of bargaining and organization in the workplace, given the fact that the labour market is a buyers' market more than a sellers' market. The power and voice of worker is therefore in

numbers rather than in individuals. The next chapter presents the policy and legislative framework regulating domestic work in South Africa.

CHAPTER 4: POLICY AND LEGISLATIVE FRAMEWORK FOR DOMESTIC WORK IN SOUTH AFRICA

4.1 Introduction

This chapter provides a depiction of the policy environment regulating domestic work in South Africa. Domestic work for the most part, has been considered as falling outside of “productive labour” (du Toit, 2013) since it takes place in the private home of employers. Therefore, there was a vacuum of legislation, both internationally and nationally, regulating the domestic labour sector, as doing so was viewed as somewhat amounting to interference in ‘domestic affairs’ (Fish, 2006; Dhlamini & Murray, 2009). In light of the prevalent exploitation and gross violations of human rights that characterize domestic work globally (Bosch & McLeod, 2015), governments around the world, including the South African government have proactively taken action in establishing the necessary regulation and legislation needed to inform the regulation of this vulnerable sector.

The legislations which inform the way in which domestic work is regulated in South Africa, are Convention No. 189 and Recommendation 201 (2011) of the International Labour Organisation, which were ratified by the South African parliament. The right to fair labour practices is enshrined in Chapter in section 23(1) of the Constitution, and is operationalized by the Basic Conditions of Employment Act 75 of 1997 and Chapter Eight of the Labour Relations Act 66 of 1995. The right to freedom of association is enshrined in sections 18 and 23 (2) to (5) of the Constitution and guided by Chapters 2 and 3 of the Labour Relations Act.

The function of the Constitution of the Republic of South Africa is to protect the human rights of all people living in South Africa, from all segments of society. Subsequently, the primary objective of the Labour Relations Act is to elevate labour rights into human rights. The mechanism which the state uses to regulate the working conditions of employees is the Basic Conditions of Employment Act, and therefore extend protection to domestic workers. Due to the shortfalls of the aforementioned pieces of legislation in extending labour rights to domestic workers, Sectoral Determination 7: Domestic Worker Sector, was promulgated in 2002 by the Minister of Labour. This determination forms the cornerstone for the monitoring of domestic work in South Africa.

4.2 C189 - Domestic Workers Convention, 2011 (No. 189) and R201- Domestic Workers Recommendation, 2011 (No.201)

Convention No. 189 is a treaty which regulates the domestic work sector, internationally. It seeks to protect domestic workers from exploitation in the workplace, by empowering domestic workers by means of affording them labour rights and establishing standard principles to regulate domestic labour, internationally. Convention No. 189 was ratified in 2011 (I.L.O, 2012).

Convention No. 189 and Recommendation 201 are meant to be read in collaboration, however, they are not mutually inclusive. This is as a result of Convention No. 189 being a legally binding document, whereas Recommendation 201 is not legally binding. It is merely a document which is meant to regulate the implementation of Convention No. 189 for member states (I.L.O, 2012). Recommendation 201 stipulates the guidelines for the strengthening of policies on domestic work and national law (I.L.O, 2012).

According to Convention No. 189, Article 1, a domestic worker may be classified as “any person engaged in domestic work with an employment relationship” (I.L.O, 2012). In other words, this means that if someone undertakes domestic work as an occupation, where they perform certain domestic duties, for a remuneration in return, then, they meet the requirements to be classified as a domestic worker, under this definition given by the International Labour Organisation. Convention No. 189 further stipulates that a domestic worker need not necessarily be someone who works on a full-time basis (I.L.O, 2012). They may also be persons who work on a part time basis, and in some instances, may work for multiple households (I.L.O, 2012). Also, a domestic worker may work in a foreign country (I.L.O, 2012).

Article 3 of Convention No. 189 emphasizes that domestic workers have the legal right to organize and mobilize and most importantly, with whomever they want to (Ziang, 2016). Further, domestic workers have a right to advocate, collectively, as a labour sector for their needs; relating to fair labour practices and better working conditions (I.L.O, 2012). Moreover, Recommendation 201 provides that domestic workers may use the minimum standards set by the convention, and its recommendations to try and bring about change in their national laws, by abolishing legislation that stands in the way of these provisions being realized, and bolstering the power of workers’ organisations (I.L.O, 2012), in an effort to improve the lived

realities of domestic workers (du Toit, 2013). Whether or not the country which the domestic worker is employed in has ratified Convention No. 189 is immaterial (I.L.O, 2012).

Article 3 further prescribes that “Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention” (Article 3, para.1). It follows from here that the rights of domestic workers should be protected and upheld at all times from all forms of abuse. Further, Recommendation 201 makes it mandatory that all national governments and employers of domestic workers around the world, exercise the duty to shield domestic workers from all types of abuse, harassment and violence (I.L.O, 2012). Recommendation 201 further sets out that national governments must set up complaint mechanisms, as well as investigate and prosecute contraventions of Convention 189 (Para.7, I.L.O, 2012).

Article 7, in Convention No. 189 makes it mandatory for employers of domestic workers to ensure that they draw up an employment contract, with provisions which the domestic workers can easily understand, and be informed of, before they resume their duties (I.L.O, 2012). Further, domestic workers are entitled to overtime pay for every hour which they work overtime, they are eligible for a rest period of no less than 24 hours in one week (I.L.O, 2012). In this respect, Recommendation 201 advocates that in such instances, domestic workers should receive assistance with comprehending the specifications of their contract (Para.6, I.L.O, 2012).

Article 12 of Convention No. 189 demands that wages must be paid directly to the employee in cash, at intervals of a maximum of one month. Domestic workers may be paid by cheque or through a bank transfer, on provision that the employee has consented to this, or the law permits this, or collective agreements allow it. Furthermore, fees which are levied by private employment companies may not be debited from the salary of the employee (I.L.O, 2012).

Convention No. 189, Article 4, demands that no child who is younger than 15 years of age may work as a domestic worker, as this amounts to child labour (I.L.O, 2012). Children who are 15 years old and above, but less than 18 years old, may work as domestic worker, on condition that their work does not interfere with their compulsory schooling (I.L.O, 2012).

Article 8, of Convention No. 189 sets out that employers of Live-in domestic workers may not keep the identity and travel documents of their employees with them, and should not compel

their domestic workers to remain in the work place property during their rest periods, or leave times (I.L.O, 2012). Recommendation 201 supplements this provision by advising that domestic workers should not have their rights violated, and lunch break times must be honoured and not used for work, unless overtime will be paid to the domestic worker (Paras.,3, 17 and 18, I.L.O, 2012).

Finally, Article 16 and 17 of Convention No. 189, prescribe that states through concerted efforts, must create environments which allow effective access to courts, tribunals, or create other mechanism to settle disputes in the domestic labour, sector (I.L.O, 2012). Recommendation 201 argues that the necessary labour dispute structures must be set up that will deal with investigations, mediation and arbitration of cases relating to abuse in the domestic labour sector (Para.7, I.L.O, 2012).

Convention No. 189 and Recommendation 201 inform all legislation regulating domestic work in South Africa, due to the fact that South Africa is a member state of the I.L.O, and international treaties which the country has signed are legally binding. Owing to this, it is mandatory for all legislation regulating domestic work in South Africa to be in line with the provisions of Convention No.189.

4.3 The Constitution of the Republic of South Africa (1996)

The constitution of the Republic of South Africa (1996) is the most supreme law, nationally, and informs all other laws in South Africa. All legislation passed needs to be in line with the provisions of the constitution.

Chapter 2 of the RSA constitution (1996:9), section 23 relates to labour rights in South Africa (RSA constitution, 1996). Sections 23 (1) and (2) respectively state that, “(1) Everyone has the right to fair labour practices” (RSA Constitution, 1996:9) and “(2) Every worker has the right” (a)” to form and join a trade union”; (b)” to participate in the activities and programmes of a trade union”; and (c) “to strike” (RSA Constitution, 1996:9).

Consequently, section 23 (1) affirms the fact that all workers in South Africa have a right to enjoy “fair labour practices” in the workplace (RSA Constitution, 1996:9). Section 23 (2) further stipulates that all workers in South Africa, have a right to be a member of a trade union and take

part in its campaigns, and finally, all workers have the right to protest (RSA Constitution, 1996:9).

4.4 Labour Relations Act 66 OF 1995

The Labour Relations Act 66 of 1995 seeks to promote fair labour practices in South Africa. The LRA operationalizes the objective in Section 23(1) in the constitution, enshrining the right to fair labour practices. The Act seeks to achieve social justice by enabling workers to mobilize and be represented in forums of collective bargaining and participate in collective agreements (LRA; R.S.A. 1995). Through the establishment of labour dispute forums such as the Commission for Conciliation Mediation and Arbitration (CCMA), the Labour Court and Labour Appeal Court, which are meant to assist in resolving conflicts between employers and employees in line with the Constitution, and all other relevant legislation regulating employment in South Africa. These forums through their work are meant to promote fair labour practice in South Africa (LRA; R.S.A. 1995).

4.5 Basic Conditions of Employment Act 75 of 1997

The Basic Conditions of Employment Act 75 of 1997, hereafter referred to as the BCEA is a blanket legislation that applies to all workers, in all labour sectors in South Africa (BCEA; R.S.A. 1997). The establishment of the BCEA is in consonance with the laws prescribed by the International Labour Organization, as South Africa forms part of the member states of the organization. Moreover, the BCEA is in consonance with section 23 (1) of the Constitution (BCEA; R.S.A. 1997).

The primary aim of the BCEA is to ensure that the South African labour market develops and upholds a culture of fair labour practices in the workplace (BCEA; R.S.A. 1997). In this regard, the BCEA was introduced in order to achieve this, by developing and enforcing basic conditions of employment and monitoring the basic conditions of employment in all labour sectors (BCEA; R.S.A. 1997).

The BCEA is applicable to all employees and their employers in South Africa, in all labour sectors, excluding the National Defence Force, National Intelligence Agency, South African Secret Service, and unpaid volunteers who volunteer their services to organizations which serve a charitable purpose (BCEA; R.S.A. 1997). Further, the BCEA does not apply to any employee who works under 24 hours a month for their employer (BCEA; R.S.A. 1997).

The BCEA provides that no employee may work for a period exceeding 45 in a week (BCEA; R.S.A. 1997). If an employer works for 5 days or less in a week, they may not work for more than 9 hours a day. For those working 5 days or more in a week, they may not work for a period exceeding 8 hours in a day (BCEA; R.S.A. 1997).

BCEA sets out that no employee may work more than 3 hours of overtime per day, and 10 hours per week. Additionally, the remuneration rate for overtime work must be at least 1,5 times the employee's regular remuneration rate (BCEA; R.S.A. 1997). For every 5 consecutive hours of work, an employee qualifies for a lunch break of 1 hour. It is illegal to make an employee perform their work duties during their lunch break. Also, lunch break times may not be reduced to anything less than 30 minutes (BCEA; R.S.A. 1997).

The Act sets out that all workers are entitled to sick, annual, maternity and family responsibility leave, and further stipulates how these should be calculated (BCEA; R.S.A. 1997). The BCEA stipulates that it outweighs any agreement entered into prior to or after its inception. It is mandatory that all contracts of employment uphold its provisions (BCEA; R.S.A. 1997).

Chapter 8 of the BCEA provides that the Minister of Labour is responsible for establishing sectoral determinations for labour sectors which are deemed vulnerable in the country, and are not represented in the collective bargaining processes (BCEA; R.S.A. 1997). These sectoral determinations must establish the basic conditions of employment for employees in these sectors, in order to protect these vulnerable groups of workers from exploitation by the employers (BCEA; R.S.A. 1997). Hence it is Chapter 8 of the BCEA that legally informs the promulgation of SD7.

4.6 Sectoral Determination Seven (SD7): Domestic Worker Sector

Sectoral Determination Seven, hereafter referred to as SD7 was promulgated in 2002 by the Minister of Labour, in order to regulate the domestic work sector. SD7 was the first, and only piece of legislation that seeks to deliberately bring South African domestic workers under the protection of the law, by regulating minimum wage setting, working hours and provisions for terminating a contract of employment, inter alia.

SD7 seeks to bring all domestic workers in South Africa under the protection of the law and empowering them as workers, by affording them labour rights. It is mandatory that all employers

of domestic workers in South Africa have a copy of SD7 or an official summary of it, available at no cost on the website of the Department of Labour, or the Government Printer in Pretoria (SD7; R.S.A. 2002). According to SD7, a domestic worker may be classified as any person who is employed to perform the following duties (SD7; R.S.A. 2002);

(a) someone who is employed to do the garden in a private home

(b) someone who takes care of the aged, disabled, sick, frail, or children in a private household

(c) someone who was specifically employed to drive the vehicle which transports children of a particular household to school

The term, domestic worker also extends to individuals who are employed by independent contractors and employment services (SD7; R.S.A. 2002).

(i) Minimum wage setting

SD7 prescribes that domestic workers must be remunerated for every hour of work, or a portion of an hour for which they have worked (SD7; R.S.A. 2002). The hourly remuneration due to a domestic worker must be determined according to (a) the area in which the domestic worker is employed in, and (b) the number of hours they have worked in a week (SD7; R.S.A. 2002).

SD7 makes it mandatory that domestic workers be remunerated according to the area in which they work; which is divided into two categories, i.e. Area A and Area B. These areas are grouped into municipalities. Area A is constituted of municipalities situated in urban areas and Area B is constituted of the rest of the areas in South Africa which are not mentioned in the Area A category (SD7; R.S.A. 2002). The remuneration rate for domestic workers employed in Area A is slightly higher than that of those employed in Area B based on the presumption that living expenses are higher in urban areas than they are in rural areas (SD7; R.S.A. 2002).

As per the minimum wage increases effective from 1 December 2016 to 30 November 2017, domestic workers who are employed in Area A, and who work more than 27 regular hours a week, must earn a remuneration rate of an hourly minimum of R12,42, with a weekly minimum of R559,09 and a monthly minimum of R2422,54 (Department of Labour, 2017).

Domestic workers who are employed in areas not mentioned in Area A (the rest of South Africa), must earn a minimum hourly rate of R11,31, a minimum weekly rate of R508,93 and a minimum monthly rate of R2205,16 (Department of Labour, 2017).

SD7 prescribes that domestic workers who work a regular 27 hours weekly or less must be afforded a moderately higher remuneration, as a means to offset them not having full time employment (SD7; R.S.A. 2002). Further, SD7 prescribes that domestic workers may not be paid a remuneration rate which is lower than a daily rate of 4 hours. Should it be the case that a domestic worker is employed for less than 4 hours a day, they still cannot be paid for less than 4 hours, as it is (4 hours per day) the minimum standard rate (SD7; R.S.A 2002).

Domestic workers who are employed in Area A for 27 regular hours or less, must be paid minimum rates of R14,54 hourly, R392,59 weekly, and R1701,06 monthly (Department of Labour, 2017). Domestic workers who are employed in Area B, under the same conditions are legally entitled to minimum rates of R13,35 hourly, R360,54 weekly, and R1562,21 monthly (Department of Labour, 2017).

It is illegal to pay domestic workers anything less than the minimum hourly rate as determined by the Labour Department. Employers who cannot afford to pay their employees the prescribed hourly rate, are advised to reduce the working hours of their employee rather than dismiss them, as dismissing them solely as a result of them not affording to pay them the minimum prescribed hourly remuneration rate, amounts to unfair labour practice (SD7; R.S.A. 2002).

(ii) Working hours

In consonance with the provisions specified in the Basic Conditions of Employment Act 75 of 1997, SD7 demands that no domestic worker who works for a maximum of 5 days a week, may do so for a period exceeding 45 hours weekly, and 9 hours daily (SD7; R.S.A. 2002). Domestic workers who are at work for more than 5 days weekly, may work a maximum of 8 hours, daily (SD7; R.S.A. 2002). Further, overtime work may not be longer than 3 hours in one day. Therefore, overtime must not exceed 15 hours per week (5 days X 3 hours daily). The remuneration rate for overtime work must be calculated as 1,5 times the regular hourly rate (SD7; R.S.A. 2002). Domestic workers who work for a period of 5 consecutive hours are entitled to a lunch break of an hour (SD7; R.S.A. 2002).

(iii) Leave provision

SD7 stipulates that domestic workers are entitled to annual, sick, maternity, and family responsibility leave (SD7; R.S.A. 2002). Employees have a right to annual leave of 3 weeks a year, and family responsibility leave of 5 days per annum (SD7; R.S.A. 2002). Furthermore, they qualify for sick leave, which is calculated as the number of days worked during a 6 week period, in a cycle of 3 years. Finally, there is maternity leave, where an employee is entitled to 4 months of unpaid leave (SD7; R.S.A. 2002).

(iv) Information relating to payment of wages

Employers of domestic workers may elect to pay their employees by cheque, cash or a direct deposit into the employee's banking account. The domestic worker must be handed their payment at their place of work, and during regular working hours in a sealed envelope (SD7; R.S.A. 2002). Moreover, it is mandatory that employers of domestic workers issue their employees a pay slip, which the employer is expected to keep for three years (SD7; R.S.A. 2002).

The act further sets out that it is illegal for employers of domestic workers to make deductions in which the amount being deducted is greater than the actual remuneration received. Also, it is illegal to make deductions on breakages (electrical appliances), damages (ironing), meals provided during hours of work, uniform or work equipment (SD7; R.S.A. 2002). Deductions for accommodation may be made (not more than 10% of total remuneration) provided that the room is in a satisfactory condition, and provides sufficient protection from the weather (SD7; R.S.A. 2002).

Conditions under which an employer is permitted to make deductions on an employee's salary include if the deduction is for a loan or advance, not exceeding 10% of their total remuneration rate (SD7; R.S.A. 2002).

Deductions can also be made if they are going towards contributions to medical aid insurance, savings, pension fund, trade union subscription, rentals or towards an order of account payment to a financial institution (SD7; R.S.A. 2002).

(v) Contract of Employment

The inception of SD7 makes it compulsory for employers of domestic workers to provide them with a contract of employment. In order to render the contract legally binding, both the domestic worker and their employer must consent to it and sign it. The contract must be reviewed annually by both parties (SD7; R.S.A. 2002).

(vi) Termination of employment contract

SD7 prescribes that if a domestic worker has been employed for a maximum of 6 weeks, an employer must give the worker a week's notice before terminating their contract. In instances where the worker has been employed for a minimum of 6 months, the employer must give the employee notice of approximately 4 weeks before they terminate their contract. In the event that a contract is terminated and the employee is a live-in domestic worker, the law permits them to stay on the property for 1 month, which serves as the notice period. The domestic worker may thereafter request to continue to stay on the property, as a tenant (SD7; R.S.A. 2002).

An employee who is dismissed as a result of their employer's economic, technological or structural set-up qualifies for a severance pay from their employer. However, there is a proviso; a domestic worker qualifies for a severance pay only if there is no alternative employment (SD7; R.S.A. 2002).

The amount of the severance pay must be calculated as = one week's pay for every full year of employment (SD7; R.S.A. 2002).

Finally, an employee has a right to receive a certificate of service when their employment contract is terminated (SD7; R.S.A. 2002).

(vii) Prohibition of child and forced labour

In harmony with the provisions of the Basic Conditions of Employment Act 75 of 1997, which states that child and forced labour are illegal, SD7 reinforces this provision. Therefore, S.D.7. clearly provides that no child under the age of 15 years may be employed (SD7; R.S.A. 2002).

(ix) Enforcement

Contraventions of SD7 are to be handled by inspectors from the Department of Labour. Initially, they will attempt to address a complaint over the phone. Should this be unsuccessful, they will attempt to secure an undertaking and finally issue out compliance orders if, in their professional

opinion, they think that the law has been broken (SD7; R.S.A. 2002). Hereafter, if the case has not been solved, it will be referred to the Labour Court (SD7; R.S.A. 2002). Employers do have the option to object to a compliance order, should they be unsatisfied with it (SD7; R.S.A. 2002).

4.7 Conclusion

This chapter has provided a discussion of the legislative framework regulating domestic work globally, and in more detail, the legislative framework in South Africa. Convention no. 189 of the International Labour Organization, provides the legislative framework for the global regulation of domestic work. With South Africa being a member state of the International Labour Organization, all domestic legislation regulating labour practices in South Africa is in line with the standard practices for fair labour practices, as advocated for by the International Labour Organization; this includes section 23 (1) of the RSA Constitution of 1996, The Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997, and finally, Sectoral Determination 7, which is the only legislation in South Africa that specifically seeks to regulate the domestic work sector, which is considered one of the most vulnerable labour sectors globally and locally. The next chapter presents the findings and analysis chapter of this study.

CHAPTER 5: FINDINGS AND ANALYSIS

5.1 Introduction

This chapter presents the findings and analyses from the in-depth, semi-structured interviews conducted during the study of the implementation of SD7. The chapter discusses the impact which SD7 has had on the regulation of domestic work, and how it has affected the lived realities of domestic workers with reference to their working conditions. Essentially, at a broader level, the findings and analysis of this chapter discuss the extent to which, if any, that SD7 has managed to afford domestic workers with labour rights, and elevate these labour rights into human rights. The participants interviewed include a representative from the domestic worker union, SADSAWU, two employers of domestic workers, and four domestic workers.

The responses are based on the subjective experiences of the participants, with regards to the role which SD7 plays in their lives. The responses of the seven participants have been coded as R_1 for the domestic worker union representative, E_2 and E_3, for the employers of domestic workers, and D_1, D_2, D_3, and D_4 the domestic workers.

The data was analyzed using content thematic analysis. The participants' responses were classified into three main themes. Firstly, the conceptualization of SD7 by the respondents. Secondly, access to of some the provisions of SD7, and the last theme is the issues or challenges which are experienced in the implementation of SD7. The themes are related to the conceptual and theoretical framework discussed in chapter 2. These themes are discussed in order to establish the extent to which (if any) the inception of SD7 has improved the working conditions of domestic workers, and allowed domestic workers to enjoy labour rights.

The following research questions guided the investigation:

- What are domestic workers' conceptions of S.D.7?
- What are domestic workers' experiences of S.D.7 implementation?
- What are the government departments' experiences of implementing S.D.7?
- What are the experiences of unions in representing the interests of workers in the domestic labour sector?

- What are attitudes and perceptions of S.D.7 by employers of domestic workers?

5.2 Conceptualizations of S.D.7

The OECD (2000:10) argues that in order for the implementation of a regulatory policy to be effective, it is imperative that the target group be aware of the regulation and understand it. This section discusses how the understandings of S.D.7 by the different respondents either facilitates or is a challenge to the implementation of S.D.7.

The findings of this study revealed that the respondents do have a level of awareness of legislation regulating the sector, to some degree, even though they did not know the actual name of the determination (SD7). The respondents have different conceptualizations of the law regulating domestic labour.

When the respondents were asked if they knew of any law which specifically regulates domestic work, one domestic worker said:

“Mhm. It’s the law about hours that says how many hours we must work. And the law says you must not sign just anything with the ‘mlungu’. It also says when you go to the clinic you must go back to work. You are allowed to go the clinic but then you must go back and work. It also says you must not talk just anyhow with a ‘mlungu’ when you are irritated. And time, you must respect the ‘mlungu’s’ time, and not come in [does not complete the sentence] and you must not leave the job on your own” (D_2).

Another respondent who is also a domestic worker revealed that she understood S.D.7 as:

“The law that regulates... [silence for a few seconds] You need to know what time you start work and what time you finish. And an agreement, you must know what you agree on with each other, and not just working, and you end up doing things which you have not agreed on. If they increase your work, they must increase your money. If lets say I finish at 3p.m, and then something happens and I finish at 4p.m, I must be given money for that because I have went over my time. Also, if I eat their food, when they stop giving me food they must pay me for that, that they stopped giving me food. Because at some places it happens that you eat bread. But you find sometimes

that the bread is not there, there have not left bread for you. And you find that someone must now bring their own food from home. Now they are using their own money” (D_1).

A representative from the union said:

“I would say the law that protects domestic workers in South Africa, is the law that is Detection 7, which says people must register at Labour so that they can also enjoy the same rights as other people. At least if everything has not come together yet, I must be under a union. Sorry, not a union, but I must be registered at the Department of Labour. So that even if I lose my job, I will still get UIF. Because of all the things that other workers get, let me at least get UIF” (R_1).

The OECD (2000:11) argued that in order for regulatory policies to be effective in meeting their objectives, the target population need to be aware of the regulation and understand it. A common thread amongst the responses from respondents is that although they do not seem to know the actual name of S.D.7, they are all aware of the existence of the legislation. The responses also reveal that none of the respondents are aware of the correct actual name of the legislation, and its provisions in their entirety, or close to it. The respondents’ limited knowledge of the determination is evident in both domestic workers’ (D_1 and D_2) responses who only referred to the determination in broad terms, simply as “a law.” Also, the representative from the union referred to the determination as “detection 7” (R_1), instead of determination 7. The implication of the respondents not having a complete understanding of S.D.7 is that the extent to which domestic workers are able to claim their labour rights, as set out in S.D.7 will be limited. This is because if they are not fully aware of their rights, and do not fully comprehend them, then they will not be able to effectively lay claim to them.

Not fully understanding and having knowledge of SD7 limits the extent to which domestic workers can effectively lay claim to their labour rights. This was highlighted in D_2’s experience. In a case where she was unfairly dismissed from work and challenged her employers she still failed to get her UIF pay. D_2 shared that:

“I slept in a holding cell for 3 days having done nothing. The ‘mlungu’ had called their contractor, and then turned around and said I had stolen their TV when it had

gone missing. What made me angry the most is that he did nothing to the boys who were there that day. The boys who were working for the contractor. He chose to accuse me. Even the police asked why they thought I would steal a TV from them in broad daylight after working for them for 24 years. You see, I was abused. I was even hit by the police. You see I do not even want to talk about this thing it is very difficult. I wasted a lot of money trying to use lawyers and the lawyers just spent my money doing nothing. I saw that we should forget about lawyers and join unions. Because when I think about it, I spent 9000 [Rands] and some change on a lawyer. And the lawyer surprised when he was discussing the TV case in court, because I thought that was over when I was released from the holding cell because I got out for free and the boys from the contractor. We were told there was no case. The lawyer did not talk about the 'mlungus' compensating me for firing me unfairly. You see, now they were bringing an old case and when they saw that there was no case, they dropped it. So I paid for a lawyer and the lawyer did nothing." (D_2).

When an employer was asked if they are aware of the minimum wages and conditions of employment which the labour department prescribes for domestic workers, the respondent replied:

"I do not have those things. I would be lying. mhm. To be honest, I have never thought about it. I do not even know where to find them." (E_2).

Another respondent who is also an employer of a domestic worker claimed that:

"No I am not aware. Uhm, I was aware before because this amount I am giving her now, I think it's the salary which was prescribed by the Department of Labour earlier. I have never increased it though. But I have my reasons. When they start the job, I give them this amount. I will see. This 2100 [Rands] I had gotten it, I remember I heard it on the radio, and thought let me give her this amount which the Department of Labour says I should given her. But this year I have never checked. But you see I changed my aunty. I have another one who is new now." (E_1).

Incentive tools assume that individuals are not naturally inclined to act in line with policy stipulations unless they are influenced, encouraged, or forced by manipulation of money,

freedom or other concrete rewards (Schneider & Ingram, 1990:515). In the case of the both E_1 and E_2 it is apparent that fines as a tool to encourage compliance with minimum wage pay is not sufficient to achieve this. Further, based on the fact that both respondents stated that they do not know what the minimum wage rate is, it could be recommended that; perhaps the DoL should consider other policy tools to try and increase levels of compliance, such as symbolic and hortatory tools.

Symbolic and hortatory tools do not use incentives to gain compliance but seek to speak to the core beliefs of individuals so that individuals are self-motivated to comply with legislation (Schneider & Ingram, 1990:519). Perhaps these tools can be more effective in increasing levels of compliance with SD7 because with such tools, the assumption is that people develop preferences with ideas in line with their religion or culture, therefore if a policy is in line with an employers' core beliefs, they are likely to be self-motivated to comply with SD7 provisions because the reason for compliance would be tied to a core belief which they hold, perhaps to fairness, justice or the like.

Another factor identified by the OECD which influences the extent to which a regulatory policy can be effective, is the willingness of the target population to comply with the law (OECD, 2000:11). In this case the onus is on the employers of domestic workers to comply with the provisions of S.D.7, as it seeks to regulate the working environment of domestic workers. The responses of E_1 and E_2 show that they are not compliant with the provisions of S.D.7. Further, E_2's response that "I have never thought about it" (E_2) shows that she does not have intention to comply with SD7. The consequences of the actions of E_1 and E_2 in failing to comply with S.D.7 are that the primary objective of the legislation, which is to improve the working conditions of domestic workers, will not be met. This would mean that domestic workers would continue to have poor working conditions that are oppressive and exploitative.

The reason for SD7 not enjoying full compliance on the side of employers can possibly be explained by the power imbalance between domestic workers and their employers. This assertion is supported by the argument of the OECD, that institutional, market and cultural factors will have an impact on the extent to which a regulatory policy can be effective (OECD, 2000:11). The manner in which these factors affect implementation seem to be covert rather than overt. This was exemplified in D_4's explanation as to why she does not stand up to her employer for

not giving her overtime pay for working on Saturdays, even though she knows she must be paid overtime for it. She expressed:

“I am getting used I know. What they are doing is not legal, but there is nothing I can do about it because I need this job. I know that if I ask for overtime pay they might fire me. It happened to one person I know, we use to catch the same taxi to work in the morning. She asked her employer to give her overtime pay for the work she does on Saturdays, but her employer said she does not have money and if that will be a problem for her, she can look for another job. Three months later they gave her notice and fired her” (D_4).

In the case of D_4, although it was not implicitly stated by the employer who is referred to in the story, that there are many people who could replace her domestic worker. The employer callously exploiting her domestic worker can be explained by the market of domestic work. There is a surplus of unskilled labour in the country, and jobs such as domestic work require no basic skills for the job. Therefore, as Du Toit argued, the labour market becomes a buyers’ market more than a sellers’ market (Du Toit, 2010:210). Therefore, employers have an unspoken power over their employees because both the employer and employee know that the employee is desperate for the job. Further, this gives employers the power to almost unilaterally determine the employment contract of their domestic workers. The findings supported this claim when E_1 was asked if her domestic worker had an employment contract and how the provisions of the contract were decided upon. The employer revealed that:

“She does not have a contract. I have never had a contract for any of my domestic workers. Also, that thing results in a lot of trouble when you want to let the person go. I just do not use one” (E_1).

When a domestic worker was asked if she had an employment contract and how it was decided upon she shared that:

“Yes, I do have a contract of employment which says everything I need to do at work, when I start, when I finish and how much I get paid a day.” (D_3).

When she was asked how the provisions of the contract were decided upon, D_3 said:

“My employer gave it to me when I started work. We did not discuss it. She just explained to me what everything means and that I must sign it if I accept the job. That was it.” (D_3).

When D_3 was asked if she was completely satisfied with her employment contract she explained that:

“I wish they paid me more money. ja, that is the thing” (D_3).

When she was asked if she ever raised this concern with her employer, D_3 revealed that:

“what can I say, nothing. If the employer says this how much I can afford, then that’s it. You must accept it if you are desperate for work like me. I am a single mother” (D_3).

This section has revealed that although the different respondents do not know the exact actual name of S.D.7, despite this, they are aware of the fact that there is legislation which is put in place to specifically regulate the domestic worker sector. Also, most of the respondents’ responses demonstrate that they do have some understanding of different aspects of SD7 but do not understand the determination in its entirety. The inadequate understanding of the provisions of SD7 by domestic workers has resulted in domestic workers not being able to effectively lay claim to their rights. Even in instances where they know that they are being exploited and know that SD7 has provisions which protect them from such exploitation, they are unable to effectively access their rights as they are usually uninformed of the steps they need to take to ensure that their employers are held accountable for their actions, without them risking being dismissed by their employers on account of them reporting non-compliance with SD7 by their employers.

5.3 Access to provisions of S.D.7

(a) access to UIF

When a respondent was asked about their experience with accessing UIF they shared:

“...They said I had stolen. I slept in a holding cell for three days. There was UIF money she was deducting from me.... We went with them to the CCMA, the case was heard. They gave me money amounting to 2000 [Rands] something like that, and money for leave and it ended like that because they did not want me at their house

anymore. Then I wanted the UIF money that they were deducting and they said I could not get it at the Labour Department.” (D_2)

The interviewer asked for the reasons which were given for this decision by DoL. D_2 elaborated that:

“They just said it’s not working out. They said that for six months. After that six months ended, I also ran out of money to keep going to town.” (D_2)

Another respondent expressed that:

“After I left my job because I was tired of being abused by my boss. I went to Labour and I was very disappointed when I got there and they told me that I would not get UIF because I don’t qualify since I left my job myself. When I asked about the money I was paying, because I was paying every month that what will happen to it. They said I won’t get it because I left the job myself, even though I was forced to leave it. That’s the rule. It is only people who were fired who get the money. But nobody would stand for that type of abuse, that I was going through I tell you. Being shouted at like a child all the time. Another woman telling you are stupid you want to be told the same thing all the time. You see this UIF thing is bad sometimes, because I needed the money. My children needed to eat.” (D_4)

The OECD argues that one of the factors which policy makers need to consider and understand when drawing up a regulatory policy, is the market place ie: the characteristics of the environment which the policy seeks to regulate, because it will influence the impact which the policy has in an environment (OECD, 2000:10). The main characteristics shaping the domestic work sector are that, (a) it is a vulnerable labour sector, and this is mostly as a result of (b) the power dynamics which shape the relationship between the domestic worker and their employer and finally (c) domestic workers are mostly black, uneducated and unskilled women.

From analysing these responses, it seems like the UIF policy in relation to domestic workers is not effective because it does not take into account the intricacies of the domestic worker sector; particularly the context in which it takes place. ie: in the private home of employers, because this means domestic workers are isolated workers. Unlike workers in other sectors, if they experience

abuse at work, there likely are no witnesses because they are in the private home of the employer. As a result, for many domestic workers there is no channel to report the misconduct of an employer. A respondent elaborated that:

“Sometimes when an employer does things that you don’t like and you try and talk to them about it, most of them are rude and will tell you, ‘if you do not want this job anymore there is the gate. You can leave.’ And that will be it. What will you do? Nothing you need the job. There is nothing you can do after that, you just have to accept the situation and live with it. It’s their house so you can’t say anything to them” (D_3).

A possible explanation for D_3 not being able to access UIF despite having being forced to resign due to an uncondusive work environment where she was subjected to abuse, could be explained by the fact that, as Lipsky argues, due to limited resources, street-level bureaucrats often do not look at cases based on their individual merits, but rather apply a blanket approach to all cases to save time and money (Lipsky, 1980:44). This could be a possible explanation for D_3 being denied UIF pay even though her case could be classified as one of constructive dismissal, where an employee’s resignation is prompted by the employer creating an uncondusive work environment. Further, Winter (2002:2) argues that because most citizens do not actually read the law, in their eyes, the way in which the street-level bureaucrat delivers a policy is the law. Winter’s claim is exemplified in D_3’s exclamation that “you see this UIF thing is bad sometimes” (D_3). This validates Lipsky’s assertion that street-level bureaucrats are important players in the implementation of policy because the way in which the street-level bureaucrat chooses to deliver a policy, is what the citizens get from government (Lipsky, 1980:15-16).

Brynard (2005:659) argues that the social, political, and economic environment in which a policy operates is an important determinant which influences the implementation of a policy. In this case, it can be argued that domestic workers face challenges in trying to access their UIF because the policy failed to take into consideration the social, political and economic idiosyncrasies of domestic work.

The failure of government to take into consideration the intricacies of the sector in drawing up this policy are apparent even to domestic workers. When a domestic worker was asked why she thinks domestic workers struggle to access UIF even though SD7 empowers them with the right to benefit from it, the respondent explained that:

“The problem with people who work like this is that, it is not people who work together. This person works there, and the other over there, you cannot even strike because of this problem. Even if you discuss it with each other because you travel together, you work on the same street. Maybe you find that someone suffers, they get abused where they work, but still, there is nothing you can help each other with. Maybe another one will try and talk to the employer and the employer will say ‘there is the gate, you can leave and I will hire someone else.’ You see that type of thing. Others find that they will go to the Department of Labour, you get there and you find that they have beat you to it, and you are now the one at fault. Why? because they have paid that side. Like someone else who was fired like that. She got there and the ‘mlungu’ had long paid, and they [DoL] said, she had joined a union, ‘there are months you have not paid for’. You could see that they were making up things. ‘You did not pay’ ‘Your employer says you are the one at fault’ ‘You were absent a lot’ but the person lives on the property of the employer. They sleep there! You see that type of thing. There are problems everywhere.” (D_1).

Arts & Von Tatenhove (2005:340) argue that power plays a key role in explaining policy practices. D_1’s response supports this claim when she revealed that “...You get there and you find that they have beat you to it and now you are the one at fault because they have paid that side...” (D_1). D_1’s response highlights how employers’ access to property (money) as a source of power enables them to exercise compensatory power at DoL, at the expense of the worker. Galbraith argues that compensatory power can give access to conditioned power, meaning that if a person has money, they can use their money to control the way in which others think about issues (Galbraith, 1983:53). In this case D_1 is arguing that the employers’ money (property) allows them to ‘bribe’ DoL workers and they irrationally take the employer’s side in cases brought before them, resulting in the perpetuation of domestic workers being exploited and them not having access to labour rights.

Although the domestic workers revealed that they experience challenges in accessing their UIF money, the union seems to be oblivious to this reality. Contrary to the negative experiences of domestic workers when it comes to UIF access, when asked about their experience of the determination, as a union, they claimed that:

“It works. It works because when an employer has fired a worker and they do not give them their things, they can sue them, and the worker gets their things back.”
(R_1).

This section of the findings shows that many domestic workers still do not have access to UIF. Further, although there are labour dispute structures such as the CCMA which domestic workers have access to, domestic workers feel as though they are put in place to represent the interests of their employers, more than their own. Moreover, the union does not seem to be aware of the extent to which domestic workers are unhappy with the way in which the UIF policy is implemented at the moment. The shortfall of the policy is that it does not take into consideration the peculiarities of domestic work. In particular, the isolated, individualized nature of the work, and the vulnerability of domestic workers as a result of this among other factors. This shortfall is evident in the policy not making provision for domestic workers who resign from their work due to aggravating circumstances, to benefit from the policy, because domestic workers are more vulnerable than workers in other fields.

(b) Power and individual bargaining

When asked if she had an employment contract and how the provisions of the contract came about, one domestic worker expressed that her agreement with her employer is:

“After every year of work I sign a contract and then the money is increased...everything is written in there, like if I am sick, how much time I can take off, and after that period, what must happen. Maybe I will have money deducted. But there is a certain period I can take off. Ja, it says a lot of things. The thing is I don’t have it with me now [the contract]” (D_1).

Another domestic worker shared that:

“No, I do not have a contract, and I have never had one...My boss has never given me one...As long as I get my money every month it’s fine. Other things I do not mind.” (D_3)

Pertaining to her working conditions, a domestic worker said:

“I start work at 8am and finish at 1pm...With my lunch break, I go on lunch when it suits me. I do it without being told...At 10am there is tea time. I make tea for grandpa and you make for yourself also. And then lunch is at 12. and then you also make your lunch...the thing is, I am fine you see. The person I work for knows the law. For instance, tomorrow I am not working. He does this because before, domestic workers never use to work on Thursdays. You see I work for five hours, but because it is Wednesday I work for four hours. Maybe even less hours. But there is no issue with me working for a few hours you see.” (D_1)

Another worker who shared her working conditions, expressed that:

“You see there is no such thing as talking about your rights. You see maybe when you are sick you do not get paid. But at the labour department they if you are sick, the ‘mlungu’ must pay you when you do not come to work because you are sick. They have not been doing that yet.” (D_2).

When D_2 was asked if she asked her employer why she does not get sick leave she explained that:

“No. I have not said anything. Ay, sometimes you are reluctant to speak to the white...” (D_2)

Arts and Trangove (2005:340) argue that power is a key variable to understanding and explaining policy practices. D_2’s reluctance to speak to her employer about fighting for her right for sick leave could be as a result of the power dynamics between her and her employer. Galbraith (1983:1-2) identified three sources of power; personality, property and organisation. Domestic workers, for the most part lack all three sources of power. But, employers of domestic workers on the other hand have access to mainly property (money) which they use to control their domestic workers.

Thus, it can be inferred that although the labour rights of domestic workers are being violated and they are aware of this violation, the power disparity between themselves and their employers is a deterrent to them claiming their rights. This reality validates Wellington & Winter (1969:1112) claim that the power imbalance between employers and their employees means that the individual cannot fight for their rights effectively, and collective bargaining therefore becomes the alternative to fighting for the rights of workers in the workplace.

The findings reveal that many domestic workers do not have contracts of employment, even though it is a provision in SD7. Amongst other contributing factors, the absence of a contract of employment for many of them contributes to the exploitative and oppressive working conditions they find themselves in.

This exploitation and oppressive working conditions as a result of the absence of an employment contract was exemplified in the case of D_1 where in a previous job she had where there was no contract of employment that was agreed upon between her and her employer. She recalled that:

“The one I left in 2012, you are called maybe there is going to be a party on Saturday and you find that you will not be paid double the fee, because you are working on a day when you are not meant to be working. You find that it’s even less than what you get paid per day during the week. You find that you clean. The ‘mlungu’ asks you if you cleaned here but you just cleaned there. You see that type of thing. You find that there are dogs in the household, and when you come in the morning you must first tend to the dogs. But you were not hired for that. There are problems” (D_1).

D_4 also shared the level of exploitation she is subjected to in her current job where she does not have an employment contract. She shared that:

“You see I work for a couple where I start work at 6am when they start getting ready for work. I look after their two children. One is 6 years old and the other one is 9 months old. I also cook, clean, wash their clothes, and iron, on top of being a nanny. They dump their 9 months old baby with me until they decide they want their child at 8 or 9pm at night when the kid goes to sleep. But I am only paid R1500 per month

because they claim they can't afford to pay me more but they always taking holidays and staying in hotels" (D_4).

Wellington & Winter (1969:1162) argue that due to the labour market being characterized by supply more than demand, this puts the power almost entirely in the hands of the employers at the expense of the workers. Therefore, collective bargaining becomes an important way to protect individuals from exploitation by employers (Wellington & Winter, 1969:1162). From this argument, we can deduce that a possible explanation for domestic workers being subjected to exploitation and oppression is not only as a result of the absence of an employment contract, but this can also be explained by the fact that since there are more people looking for jobs in the sector than the jobs available, it provides leverage to employers to unilaterally dictate the working conditions of domestic workers since they know that they are desperate for the job.

5.4 Challenges in the implementation of S.D.7

(a) Collective bargaining and organisation

Wellington & Winter Jr (1969:1112) argue that since there exists a power disparity between employers and employees, collective bargaining is therefore a necessary alternative to individual bargaining (Wellington & Winter, 1969:1112). Secondly, bargaining is a tool used to promote and strengthen democracy in the workplace, by allowing employees to play a role in their governance (Wellington & Winter, 1969:1112).

A member from the union explained their role as a union in the domestic work sector as:

"It's to encourage workers to join a union...we hold workshops where we teach them about our rights, because we need more numbers. The more we are, the stronger our voices will be." (R_1)

When a respondent (domestic worker) was asked the reasons for which she joined a union, she expressed:

"What made me join a union my child is that I once had a problem. A white I had worked for twenty four years you see. I worked for this white and they did not want me. They said I had stolen. I slept in a holding cell for three days. There was UIF money she was deducting from me. I would put in R38 and they would also put in

R38. That money I was never able to get from UIF because I did not have a union. That is when I saw that it is better I join a union, because when I went to CCMA, I had to go here and there, until the money I had finished” (D_2).

When she was asked if her employer won the case at the CCMA she expressed that:

“No, they did not win at the CCMA....the case was heard. They gave me money amounting to 2000 [Rands] or something like that and money for leave and it ended like that because they did not want me in their house anymore. Then I wanted the UIF money that they were always deducting, and they said I could not get it at the Department of Labour. They just said it’s not working out. Six months passed. You know you are supposed to get this money for six months. That six months ended and I also ran out of money to keep going to town” (D_2).

R_1’s response echoes the sentiments of Wellington & Winter’s (1969) argument about the importance of collective bargaining, when it comes to protecting workers. R_1’s response also emphasizes that the power of workers lies within groups rather than in individuals. D_2’s experience which prompted her to join a union, validates the argument that workers lack power as individuals in the workplace. These experiences give weight to Galbraith’s (1983) argument that organisation is the most important source of power in the twenty first century (Galbraith, 1983:54). Galbraith (1983:55-56) argued that an organisation refers to a group of people working together to achieve a common goal, and identified a trade union as an example of what he means as by an organisation.

In light of the above, organisation is imperative in order for individuals to have a voice in their work environment, through collective bargaining. However, an employee at SADSAWU revealed that the challenges they face in their organization are:

“The challenges we face is that the people are scared of joining a union. They think we are going to get them fired from work...But then again when someone is fired from work, they are the ones who come chasing after us asking us what they need to do. And now you must advise them. Do this, do that. It’s not like when you were trying to help them and they did not want to take your help. You find yourself helping people you get nothing from. But you help them anyway because you want them to know.” (R_1)

R_1's response demonstrates that domestic workers are unaware of their legal rights as workers as enshrined in the constitution of the country, the LRA, BCEA and SD7 respectively, as all workers in South Africa have a right to organize and bargain as a collective in the work place through trade unions. In light of this lack of information on the part of domestic workers about the rights with which SD7 empowers them with, perhaps government should consider using capacity tools to increase domestic workers' level of awareness and knowledge of their rights. Capacity tools provide information, training, education, and resources to allow individuals and groups to make decisions in line with a policy (Schneider & Ingram, 1990:517). Such tools assume that the reasons for a regulatory policy not meeting its goals could stem from a lack of information, or other resources needed to make decisions in line with a policy (Schneider & Ingram, 1990:517).

In the case of domestic workers, it seems that it is lack of knowledge, as a result of being misinformed that is preventing them from enjoying their legal right to organize. The failure of SD7 to empower domestic workers to be able to organize and bargain collectively, could be explain by one of the factors that Hood (1976) identified as affecting effective implementation (Hood, 1976 in Parsons, 1995:465). That is, that in order for an implementation plan of an institution to be effective, and for the public to receive the policy and programme, it needs to have been discussed by both the staff in an institution and the general public. In order for implementation to be effective, the public must be aware of the issue which a policy is seeking to address and also how the policy aims to combat the issue, and the impact which this intervention will have on the lives of members of the public (Hood, 1976 in Parsons, 1995:465).

When the interviewer asked R_1 if they have ever thought about raising awareness about the benefits which domestic workers could enjoy if they joined SADSAWU,. she indicated that:

“Although it is something that has crossed our minds, the thing is, you have to pay for a slot you know. That is the challenge. And we are an organisation that does not have money.”

(R_1)

Galbraith (1983:56) argued that an important factor which determines the extent to which an organisation can be effective as a source of power is the access which it has to other sources of power. The implication of Galbraith's argument in this case is that SADSAWU is not as

effective as it can be in representing the interests of domestic workers because they lack access to other sources of power.

A respondent explained why she does not see the need to join a union:

“With others you will find that they will go to the Department of Labour, you get there and you will find that they have beat you to it and you now are the one at fault, and they have paid that side. Like someone else was fired like that. She got there and the boss had long paid, and they said [DoL]...but she had joined a union, they said ‘you have months you have not paid for’ you could see that they were making up things. ‘you did not pay,’ your employer says you are the one at fault. You were absent a lot’ but the person lives on the property of the employer. They sleep there. You see that type of thing. There are problems everywhere.”
(D_3)

Brynard (2005:660) argues that the capacity which an organisation has, will impact the extent to which it is able to meet its policy objectives. Capacity refers to tangible resources such as material, financial, human and technological. Given D_3’s response above, lack of capacity could be a possible reason why domestic workers, despite there being legislation put in place in order to regulate working conditions in the sector, in the hopes that it will allow domestic workers to exercise labour rights, for the most part a majority of them work under exploitative and oppressive environments. Further, lack of capacity, in terms of finance, has negatively impacted on the union’s ability to organize and recruit new members. This has resulted in the union being limited in terms of the domestic workers it is able to reach. This was evident when R_1 explained how they reach domestic workers as a union:

“We reach each other by calling each other. Before there was no union in Maritzburg. We started it in last of last year. How it started is like this, I had pamphlets which I kept giving them [other domestic workers] and I would tell them to read them. Other times when we are in a taxi, I would brief them, and I would find that others are really in need of help because they are facing the very issues I am talking about where they work. With time we called a meeting and invited Department of Labour for them, the inspectors from the Department of Labour, people from CCMA came to come and address them and people from the union.

That's how it grew in Maritzburg. Those that believed me joined, and they would tell others and give me their numbers, and I would call them and explain the work of the union.” (R_1).

The people who are meant to represent their interests (unions) lack the financial capacity to do so effectively. Hence, despite there being a level of organisation in the sector, it has not been as effective as was expected when government brought domestic workers under the protection of the law with the inception of S.D.7

This issues that were identified in this section was that organisation in the domestic work field is weak, as a result of the intricacies of domestic work ie: isolation, intimacy and vulnerability. Also, collective bargaining is weak in the sector because the unions also lack power to be effectively represent the interests of domestic workers.

(b) Compliance

The primary objective of S.D.7 is to regulate the domestic labour field, in order to put an end to exploitative and oppressive working conditions in the domestic worker sector, by affording them labour rights, which in turn elevate into human rights (SD7; R.S.A. 2002).

The findings of this study show that many domestic workers struggle to access their rights as set out in S.D.7:

“At my current job there are no challenges.” It is the old one, where you would be called. The one I left in 2012. You are called maybe there is going to be a party on Saturday and you find that you will not be paid double the amount, because you are working on a day when you are not supposed to be working. You find that its even less than what you get paid daily per week. You find that you clean. Then the madam asks you if you have cleaned here, but you just cleaned there. You see that type of thing. You find there are dogs in the household, when you come in, in the morning you must first tend to the dogs. But you were not hired for that. There are problems.” (D_1).

Another respondent expressed that:

“The problems I saw with domestic work is that white people have a problem. And that’s what I tell people you must watch out for whites because they do not like a black person. Let me make this example. You carry a carrier bag when you go to work. You find that when a white does not want you anymore they will take something and put it into your carrier bag, you see. And you leave without noticing that there is something in your bag, and then you just see police stopping you on your way out. You see? I wish they could alert us about that. I have seen this happen to others as well, when they do not want you anymore they want you to get arrested.” (D_2)

D_1 and D_2’s responses reveal that SD7 has a low level of compliance by employers of domestic workers. The OECD, (2000:20) argues that a regulatory policy is likely to have low levels of compliance if the target population does not believe that non-compliance will likely be detected, let alone punished. Perhaps it is a poor monitoring system on behalf of DoL which results in D_1 and D_2’s experiences being the norm rather than the exception. A possible explanation for poor levels of compliance with S.D.7 could be because employers of domestic workers do not believe that they will get caught, and therefore their actions carry no consequences.

When an employer of a domestic worker was asked about her level of compliance with some of the provisions of S.D.7 she answered:

“No, no, no. Let’s not go there. It seems like you want to get me arrested. Okay, the reason why we do not register aunties is because we change them all the time. They usually do not stay for long. The one I have had the longest, we stayed with each other for 5 years. That one I ended up registering. This one I have now, these young people tell themselves that they are not in it to stay. But I have had this one for a while, but it has not been a year yet. You cannot do things like that for someone like it is guaranteed that they are going to stay.” (E_1)

Another respondent put it forward that:

“I have not registered her. I also do not know why dear. I have never thought of doing that because I know when we talk about those things, we will start talking about serious money. The serious money which we do not have [laughs] I know there are many of us who are still going to get arrested.” (E_2)

The OECD (2000:11) argues that some of the necessary conditions for a regulatory policy to be effective, are that the target population must be aware of and understand the policy, and be willing to comply with it. Further, they must be able to comply. Both the responses for R_2 and R_3 reveal that they are aware of the existence of S.D.7. In the case of R_2, non-compliance is a choice as she expressed that: *“You cannot do things like that for someone like it is guaranteed they are going to stay.”* (E_1). A number of reasons could further explain why E_1 chooses not to comply.

The OECD (2000:19) argues that there will be low levels of compliance to a regulatory policy when government fails to monitor compliance. Therefore, E_1 could possibly be dodging compliance because she knows that inspectors from DoL are unlikely to catch her defaulting. However, failure to monitor by DoL could be as a result of limited resources, as Schneider & Ingram (1990:514) argue, that when government is facing a scarcity of resources, they are unlikely to monitor effectively. The resources they have will influence the scope of their monitoring. In such cases, sanctions do not serve as a deterrent, as the chances of non-compliance being detected are slim (OECD, 2000:20). This be a possible reason behind E_2's actions, because although she knows that she is breaking the law, she still continues to do so.

The responses of E_1 and E_2 indicate that sanctions are not an effective policy tool to enforce SD7 as they have failed to deter targets from non-compliance. E_1 revealed that she does not pay UIF because she cannot afford to. Perhaps DoL should consider also using capacity tools to implement S.D.7, because judging from E_1's response about UIF, there seems to be some misconceptions about UIF because employers are only expected to contribute 1% of their domestic workers' salary. Capacity tools include providing information to targets so that they can act in line with the provisions of the policy (Schneider & Ingram, 1990:517).

This section revealed that the levels of compliance with S.D.7 are low and that employers choose not to comply. Moreover, sanctions do not seem to serve as a deterrent for non-compliance and that some employers have misconceptions about some of the provisions.

5.5 Conclusion

In conclusion, this chapter has presented the findings and analysis from the interviews conducted. These findings have been analyzed using the policy and legislative framework presented in chapter 3, as well as Power and Implementation theory, presented in chapter 2. The findings revealed that the respondents do have a level of awareness about S.D.7 and understand some aspects of the policy. The findings revealed that although there is a level of awareness of the existence of S.D.7, many domestic workers still work under oppressive and exploitative working conditions. Also, many domestic workers struggle to access some of the benefits which S.D.7 affords them such as UIF pay. Further, many of them do not have contracts of employment, and this further gives rise to their oppression and exploitation.

The findings also revealed that only a few domestic workers are unionized, because many of them are under the impression that they will lose their jobs if their employer finds out that they are part of a union. Whilst some domestic workers feel that unions are not useful in their sector. The findings further showed that unions in this sector are under resourced, as a result this impacts negatively on their effectiveness. They are not as effective as they can possibly be if they had sufficient resources to fulfil their functions. Finally, the findings revealed that S.D.7 has low levels of compliance, and that most employers know what their role is in the implementation of S.D.7 but they deliberately choose to not comply with SD7. Moreover, the findings allude to the fact that the current policy tool ie: sanctions that is being employed by DoL is ineffective in facilitating the implementation of SD7 to achieve its intended primary objective, which is to improve the working conditions of domestic workers.

The next chapter presents the conclusion of the dissertation based on the findings on all the issues covered in conceptual and theoretical framework, answering the research questions of the study.

CHAPTER 6: CONCLUSION

The function of regulatory policies is to guide the behaviour of individuals or groups in society; by stipulating what can and cannot be done with regards to a particular issue or condition (Anderson, 1997:16). This study aimed to investigate, describe and explain the issues related to the implementation of S.D.7, and the accessing of labour rights by domestic workers as stipulated in S.D.7.

The following broad questions guided the investigation:

- What are domestic workers' conceptions of S.D.7?
- What are domestic workers' experiences of S.D.7 implementation?
- What are the labour department's experiences of implementing S.D.7?
- What are the experiences of the unions in representing workers in the domestic labour sector?
- What are the attitudes and perceptions of S.D.7 by employers of domestic workers?

The study found that there is a high level of awareness of the existence of S.D.7 amongst domestic workers, even though they did not seem to know the actual name of the determination. Despite domestic workers being unaware of the actual name of the determination, it was evident that they did have knowledge of some the sections in SD7; particularly the provisions on working hours, overtime pay and sick leave.

Employers of domestic workers on the other hand, also indicated that they are aware that there is a determination that regulates the domestic worker sector which they are expected to comply with. However, the employers claimed that they were unaware of how to get hold of SD7, and as a result, it is one of the reasons why they are not compliant with the act. Further, employees of domestic workers were aware of the fact that their non-compliance carried punitive consequences, in the form of fines by the Department of Labour.

The findings alluded to the fact that incentive tools, and sanctions in particular may not be the best policy tool needed in order to increase levels of compliance with SD7, given that government is continuously plagued by the challenge of not having sufficient resources to fulfil

its duties. The findings provided support for the key argument of Dinkelman et al (2015) that a poor monitoring system on the part of the Labour Department and penalties for non-compliance that are not punitive enough, does nothing to deter non-compliance.

Although domestic workers demonstrate satisfactory knowledge and a level awareness of S.D.7, the findings of the study revealed that domestic workers face challenges in trying to exercise their labour rights provided for in S.D.7. The reasons for the inability to access their labour rights were mainly related to the power imbalance between domestic workers and their employers. Their lack of power stems from the fact that the nature of their work is individualized and isolated, and as a result, the majority of domestic workers are not organized workers. The peculiarities of the sector make it difficult for domestic workers to be able to organize.

Furthermore, their oppression and vulnerability is exacerbated by the reality that the labour market in general is a buyers' market more than it is a sellers' market. Therefore, the implications of this are that the negotiations with regards to wages and working conditions, more often than not, take place between individuals and their employers behind closed doors, which significantly diminishes the power which domestic workers have in standing up for their labour rights which SD7 empowers them with. In such cases, negotiating power lies solely in the hands of the employer and they end up unilaterally determining the provisions of the employment contract of their employer.

Although the government has set up channels for labour dispute issues such as the CCMA, the findings show that they have not had a significant impact in improving the working conditions of domestic workers. Domestic workers feel as though these structures are put in place to facilitate their oppression rather than emancipate them from it, as these labour dispute channels often give outcomes that are in favour of the employers of domestic workers, in even cases where it seems apparent that it is the employers that are at fault. The study revealed that domestic workers felt vulnerable and unable to stand up for themselves and lay claim to their labour rights provided for in SD7. Therefore, S.D.7 has not played a meaningful role in changing the working conditions of domestic workers. It seems as though the DoL needs to revise the way in which S.D.7 is currently being implemented to further take into consideration the intricacies of the domestic worker sector in the policy design.

For the most part, the implementation of S.D.7 has not improved the working conditions of domestic workers. Although the provisions of S.D.7 are a necessary intervention by government in trying to regulate the sector, it is not sufficient to meaningfully empower domestic workers with labour rights. The lack of power and organisation of domestic workers renders them weak, vulnerable and susceptible to abuse still. Further, if SD7 is to improve the lived realities of domestic workers in any meaningful way, then the Labour Department needs to strengthen its monitoring system and enforce fines that are harsh and encourage deterrence from non-compliance by employers of domestic workers.

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APPENDICES

APPENDIX 1

Interview Guide- Domestic Workers

1. Are you a part time or full time domestic workers?
2. Are you member of a union? For what reasons are you a member of a union/for what reasons are you not a member of a union?
3. What does your union do for you?
4. How many employers do you work for?
5. What tasks do you do for your employer?
6. For how many hours do you work for your employer per day?
7. For how many days do you work for your employer each week?
8. If you personally have a written list of your tasks/duties given to you by your employer(s), what does your agreement cover? What details have you agreed with your employer(s)?
9. If you receive a lunch break, for how long is your lunch break?
10. How often does your employer(s) pay you?
11. How much do you get paid by your employer(s) a month?
12. What rights do you enjoy with your employer?
13. Are you aware of any specific laws that are applicable to domestic workers?
14. Has anyone ever made sure that the rights you have (are entitled to) are enforced in practice? What happened?
15. What language do you speak with your employer? Does this have any impact in the way you are able to relate with your employer?
16. What challenges do you experience at work?
17. What can be done to improve your work conditions?

APPENDIX 2

Interview Guide – *Employers of domestic workers*

1. Do you have a full time or part-time domestic worker?
2. What duties/tasks does your domestic worker do for you?
3. If you have given a written list of tasks/ duties to your domestic worker, what does your agreement cover? What details have you agreed on with your domestic worker?
4. For how many hours does your domestic worker work per day?
5. How many days does your domestic worker work each week?
6. If your domestic worker receives a lunch break, for how long is the lunch break?
7. How often do you pay your domestic worker?
8. How much do you pay your domestic worker?
9. What type of leave do you allow your domestic worker to take?
10. If your domestic worker works over weekends, when do they work? And how often does your domestic worker work over weekends?
11. Are you aware of any legislation that regulates domestic work in South Africa?
12. What rights does your domestic worker enjoy?
13. Have you registered your domestic worker for UIF (Unemployment Insurance Fund)? Why/ why not?

APPENDIX 3

INTERVIEW GUIDE- *Domestic Workers Union*

1. What are the aims and objectives of your organization?
2. What processes and structures have you put in place to ensure that the organisation achieves its aims and objectives?
3. What benefits do domestic workers who are members of your union enjoy?
4. How do you reach out to domestic workers?
5. What are the laws/pieces of legislation that are specifically meant to protect domestic workers?
6. What has been your experience on the effectiveness/usefulness of these law(s)/legislation?
7. What issues or challenges do you face in carrying out your duties as a union?
8. What can be done to make it easier for you as a union to fulfill your role in the domestic labour market?

APPENDIX 4

Interview Guide- Department of Labour staff

1. What would you say are the purposes and uses of SD7?
2. What systems, processes and structures has the Department of Labour put in place, in order to facilitate the implementation of SD7?
3. What is your role in the implementation of SD7?
4. Has SD7 made any difference to domestic workers?
5. What are some of the challenges you face in implementing SD7?
6. How do you deal with these challenges?
7. What do you think are the problems with SD7?
8. How do you think these problems can be addressed?