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PROMOTING CHANGE IN DOMESTIC WORK
CONDITIONS FROM OUTSIDE THE STATE IN A
CONTEXT OF REGULATORY INERTIA : The Case of
Ghana

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Working Paper # 9 WORKING PAPER SERIES

Promoting Change in Domestic Work Conditions from Outside the
State in a Context of Regulatory Inertia: The Case of Ghana

LLDRL Working Paper Series, WP # 9

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Published online by the LLDRL in August 2018.

The Labour Law and Development Research Laboratory (LLDRL) is housed at McGill University's Faculty of Law in Montreal, Canada.

The Laboratory is financed by the Canadian Foundation for Innovation, an independent corporation created by the Government of Canada to fund research infrastructure.

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PROMOTING CHANGE IN DOMESTIC WORK CONDITIONS FROM OUTSIDE THE STATE IN A CONTEXT OF REGULATORY INERTIA: The Case of Ghana

Dzodzi Tsikata¹

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1. Introduction

The regulatory regimes for domestic work in Ghana have been deficient: they do not pay attention to the nature of domestic work as personal service, its location within the home, the relative isolation of domestic workers, the relative youth of domestic workers,² and their informal skills acquisition trajectories. Even more problematic, the labour regulatory regimes within which domestic work resides, have been reshaped by over four decades of economic liberalisation policies and the liberalisation of labour markets. This has resulted in a deeper entrenchment of the informalisation of work globally, but more particularly in many countries in the developing world where informal work has been the norm. In Ghana and other largely agrarian African countries, much of the work occurs within production systems, which are household based and regulated by customary practices fashioned by actors in various sectors: fishing, farming, extractive activities, artisanal production, and services. Even production for the market and marketed services are organised largely within this system.

In the early colonial period, domestic work transformed from being largely done by men in the urban economy to being dominated by illiterate and very young women, and was not considered to be work. Few domestic workers were paid wages. Instead, they were offered apprenticeship training after several years of service, as payment. On their graduation from their apprenticeship, the employer presented the domestic worker with a set of tools and equipment for the trade they had learned, for example, a sewing machine.

Domestic work has undergone striking changes in the last four decades. Under the economic liberalisation policies from the 1980s, the introduction of user fees in education effectively cut off the very poor from access to secondary education and formal employment. According to UNICEF,³ this situation contributed to the commercialisation of domestic work, as more and more poor parents have turned to commercial domestic work as an alternative route to employment and the acquisition of skills, particularly for their daughters. Therefore it is increasingly common to find older domestic workers who have at least completed basic education or in some cases, secondary education. These developments have resulted in significant changes

² In a recent study of domestic workers in Ghana, over 70% of respondents were less than 30-years-old. Dzodzi Tsikata et al, *Formalising the Informal and Informalising the Formal? Analysing Changes in Women's Work in Domestic Service and the Banking Sector in Ghana* (Accra: University of Ghana, Legon, 2011).

³ Nana Araba Apt, Centre for Social Policy Studies at the University of Ghana, Legon, *A Study of Child Domestic Work and Fosterage in Northern and Upper East Region of Ghana* (Accra: UNICEF, 2005).

in the conception of domestic work, the profile of domestic workers, and the customary law of domestic work. This has contributed to the discourse that domestic work is work that should be remunerated: there is a wide spectrum of arrangements involving both cash wages and in-kind remuneration.

Another shift is the changing profile of those who are employed as domestic workers. The growth of the Ghanaian economy has meant that certain high income employers can afford specialised services and a certain calibre of domestic worker. Some require their cooks to have training from the Polytechnic, and are prepared to pay for such services. There are organisations that train medical attendants who are asked to train domestic workers working as nannies. Some employers are in circuits that hire the services of domestic workers from the Philippines.⁴

Even with the commercialisation and increasing recognition of domestic work as work and the changing profile of domestic workers, negative attitudes toward domestic work and domestic workers have been much slower to change. At least one study has found that employers were quite entrenched in their maternalism and did not see domestic workers as citizens with the rights to decent work, to avenues for redress, and to engage in collective action. Significant in this regard were employers' preferences for younger domestic workers and their perception that domestic workers were simply helping out, or were part of the family. However, there were some shifts in employer attitudes, for instance, their willingness to discuss terms and conditions, the graphic critique of the practices of other employers, and their recognition of the value of domestic workers.⁵

In spite of these developments in the world of domestic work in Ghana, the country's regulatory framework for domestic work is deficient and lags behinds those of other African countries, notably South Africa and Kenya. Over the years, these two countries have instituted measures to improve the regulation of domestic work. The two countries also have a history of domestic workers' organisations, as well as public and voluntary sector initiatives to support domestic workers. Recent global processes leading up to the passage of the *ILO Convention on Decent Work for Domestic Workers (Convention No. 189, 2011)* revived a fair amount of interest in the situation of domestic workers in Ghana. Several actors took new steps or restored past efforts to support

⁴ Interview of Sheila Menka-Premo and Barbara Ayesu, LAWA Ghana, 14 January 2014, Accra.

⁵ Dzodzi Tsikata, "Like Your Own Child? Employers' Perspectives and Domestic Work Relations in Ghana" in Cheryl R. Rodriguez, Dzodzi Tsikata & Akosua Adomako Ampofo, eds, *Transatlantic Feminisms: Women and Gender Studies in Africa and the Diaspora* (Lanham: Lexington Books, 2015) 189.

domestic workers. For example, the government of Ghana established an inter-agency taskforce with members from within and outside government to study and work out modalities to ratify and implement the *Convention*. The effort has since dissipated with a change in the leadership of the Ministry of Employment and the death of the official driving the taskforce. There is a resulting uncertainty about the prospects for the prompt ratification of *Convention No. 189*, which had been one of the key agenda items of the taskforce.

The taskforce included non-state actors who had a record of participating in the regulation of domestic work. Notable among them were the Trades Union Congress of Ghana (TUC) and Leadership and Advocacy for Women in Africa-Ghana (LAWA Ghana). While the taskforce has ceased to function, the global advocacy in support of *Convention No. 189* and the new collectives it has spawned have played a catalytic role among non-state actors in Ghana. The TUC restarted its efforts to organise domestic workers, this time with the support of a more robust group of players: LAWA Ghana, the International Union of Food, Agricultural, Hotel, Restaurants, Catering, Tobacco and Allied Workers Associations (IUF), the Trade Union Solidarity Centre of Finland (SASK), and the International Domestic Workers Federation (IDWF). This has culminated in the establishment of a Domestic Services Workers Union (DSWU), one of the more promising developments in decades of stop and start efforts to improve the conditions of domestic workers, this time anchored in the demands of *Convention No. 189*. Several of the respondents⁶ mentioned its significance and relevance for their efforts. Sister Esther Kosi, one of the founders of the new domestic workers organisation argued:

The *Convention* will help us a lot. We have more of the domestic workers hiding, who cannot come to our meeting because they are afraid they will be fired. If it is brought to the limelight, employers will know they have rights. You know we have about 400 of them [domestic workers], I have been mobilizing them. I know where they are, I know about 20 in East Legon but they can't come to the meetings because they are afraid. We need a law that will protect them, so the *Convention* must come into the limelight. It should be ratified in Ghana, it will help them. I made them announce at church.⁷

⁶ Sister Esther Kosi, Co-founder, Domestic Workers Union; Barbara Ayesu and Sheila Menka Premo, LAWA Ghana.

⁷ Interview of Esther Kosi, Co-Founder, Domestic Services Workers Union, 6 January 2014. Accra

The significance of this development is that organisation remains an important element in the regulation of work and creation of an organised constituency to generate and push demands.⁸ This initiative is considered innovative and will be examined as our second case. The first innovation is an outcome of a seven-year advocacy effort of women's rights organisations led by the Coalition for the passage of the Domestic Violence Law (the DV Coalition), which predates global advocacy around *Convention No. 189*. The law, though highly contested, or because of that, came with a robust implementation infrastructure: the Domestic Violence Victims Support Units (DOVVSU) in Accra and various Regions and Districts in Ghana; the DOVVSU courts in three cities - Accra, Tema and Kumasi; and a Board convened by the Ministry of Gender and Social Protection. These bodies oversee the implementation of the law, which is being implemented in a post-convention context, and is therefore arguably influenced by *Convention No. 189*. The two innovations are small steps in improving the regulation of domestic work. This report examines their potential and the challenges these innovations face in the absence of a concerted effort by the Ghanaian state to regulate domestic work in Ghana.

2. The legal and institutional framework applicable to domestic workers

Rooted in a colonial legal system, the legal and institutional framework for the regulation of domestic work in Ghana consists of the provisions of various laws: the 1992 *Constitution*, the *Labour Act* of 2003 (*Act 651*) and its legislative instruments, the *Children's Act*, the *Domestic Violence Act*, as well as customary employment practices. By 2011, Ghana had ratified the eight ILO core labour standard conventions.⁹ Relevant institutions for the regulation of domestic work include the Labour Commission, the Commission on Human Rights and Administrative Justice (CHRAJ), the Labour Department, the Ministry of Manpower and Employment, and the Department of Social Welfare. In addition, domestic labour relations are regulated by customary practices, where conflicts between the employer and domestic worker are adjudicated by their families, and more rarely by traditional leaders and respected members of the extended families of the parties. This

⁸ Naila Kabeer, "Gender Equality, Poverty Eradication and the Millennium Development Goals: Promoting Women's Capabilities and Participation" (2003) Economic and Social Commission for Asia and the Pacific Discussion Paper Series No 13.

⁹ These are: i. C029 - Forced Labour Convention, 1930 (No. 29) 20 May 1957; ii. C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) 2 June 1965; iii. C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98) 2 July 1959; iv. C100 - Equal Remuneration Convention, 1951 (No. 100) 14 March 1968; v. C105 - Abolition of Forced Labour Convention, 1957 (No. 105) 15 December 1958; vi. C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) 4 April 1961; vii. C138 - Minimum Age Convention, 1973 (No. 138) 6 June 2011; viii. C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) 13 June 2000.

array of state and non-state legal systems and institutions has proved to be inadequate for the regulation of domestic work.

Ghana's *Fourth Republic Constitution* of 1992 provides the overall framework for the work conditions for workers in Ghana. Under the segment on economic rights, article 24 (1) gives every person the right to work under satisfactory, safe, and healthy conditions and to receive equal pay for equal work without discrimination of any kind. Subsection 2 guarantees every worker rest, leisure, and reasonable limitation of working hours, holidays with pay, and remuneration for public holidays, while subsection 3 guarantees the right to form or join a trade union for the promotion and protection of economic and social interests. Article 16 of the *Constitution* guarantees protection from being held in slavery or servitude and forced labour. The article on economic objectives (36 (2)(a)) of the Directive Principles of State Policy articulates that the State shall take all necessary steps to establish a sound and healthy economy whose underlying principles will include the guarantee of a fair and realistic remuneration for production and productivity in order to encourage continued production and higher productivity. Article 36 (10) enjoins the state to safeguard the health, safety, and welfare of all persons in employment, while article 36 (11) requires the state to encourage the participation of workers in the decision-making processes at their workplaces.

While the constitutional provisions are couched as applicable to all workers, the pieces of relevant legislation derived from these provisions tend to be more restrictive, resulting in the observation that they privilege workers in formal employment, who are less than 20% of the entire labour force and an even smaller percentage of women workers. The most important piece of labour legislation, the *Labour Act* of 2003,¹⁰ nominally applies to all workers and employers except those in the armed services. Under section 9 on the duties of the employer, employers have the duty to provide work and appropriate raw materials, machinery equipment, and tools. As well, they must pay the agreed upon wages at the time and place agreed on in the contract of employment or by custom without any deductions, except those permitted by law or agreed between the employer and worker. Employers are also expected to ensure that the worker is free from the risk of injury or damage to his or her health during employment, and develop human resources by way of training and retraining. They are also to provide and ensure the operation of an adequate procedure for the

¹⁰ *Labour Act* of 2003 (Act 651). Before this law was passed, the *Labour Decree* of 1967 (NLCD 157) and the *Industrial Relations Act* (Act 299) of 1965 and its amendments were two of the main pieces of legislation governing labour relations in Ghana, along with The Trade Unions Ordinance (Cap 91) and its amendments, the Trade Disputes (Arbitration and Inquiry) Ordinance (Cap 93), the Conspiracy and Protection of Property (Trade Disputes Cap 90), and the Public Service (Negotiating Committee) Law, 1992 (PNDCL 309).

discipline of workers and to provide the worker with a copy of the employment contract. They have the duty to keep open channels of communication with the worker. Section 10 of the Labour Act gives workers the right to work under satisfactory, safe, and healthy conditions; receive equal pay for equal work; have rest, leisure, reasonable working hours, and paid holidays; form and join a trade union; and be trained and retrained. As well, they are expected to receive information relevant to their work. In their turn, section 11 enjoins workers to work conscientiously; report regularly and punctually for work; enhance productivity; exercise due care in the execution of their work; obey lawful instructions about the organisation and execution of their work; take reasonable care for the safety and health of fellow workers; and protect the interests of and take proper care of the property of the employer under their immediate control.

Notwithstanding these provisions, the *Labour Act* is limited in several ways in relation to domestic work. For example, the interpretation section of the Act (section 175) defines a domestic worker as “a person who is not a member of the family of a person who employs him or her as house-help”.¹¹ This distinction about family is to differentiate domestic work from child fostering practices which involve extended family members and are arranged in the context and spirit of kinship. However, its effect is to exclude paid workers who happen to be family members of those who have employed them and fostered children, who do domestic work in return for a roof over their heads and the opportunity to attend school.¹² Furthermore, the definition does not cover the possibility of domestic workers being employed in income generating activities, which is often the case when they are employed by persons working in the informal economy.¹³ LAWA Ghana’s definition of domestic workers, as individuals who work in the houses of their employers and receive payment either in cash or in kind or both, is broader and more appropriate for the situation in Ghana.¹⁴

Secondly, there is not a single provision of the *Labour Act* directed specifically at protecting domestic workers. As such, they are excluded from certain critical provisions. Section 44 of the *Act* states that “this sub-part and sections 33 and 34 do not apply to task workers or domestic workers.” The sub-part in question is III, which covers rest periods, specifically daily (thirty minutes break in between continuous work and 12 hours of rest daily) and weekly (48 consecutive

¹¹ *Labour Act* of 2003 (Act 651) 52.

¹² *Supra* note 3.

¹³ Dzodzi Tsikata, “Domestic Work and Domestic Workers in Ghana: An Overview of the Legal Regime and Practice” (2009) International Labour Organization Conditions of Work and Employment Series No 23.

¹⁴ Leadership and Advocacy for Women in Africa-Ghana (LAWA-Ghana), *Domestic Workers in Ghana: First to Rise and Last to Sleep* (Washington: Georgetown University Law Center, 2003).

hours every seven days) rest periods, while sections 33 and 34 peg maximum hours of work at 40 hours a week, which translates into 8 hours a day. Section 32 of the *Act* states that the sub-part of the *Act* which deals with leave entitlements does not apply to a person employed in an undertaking in which only members of the family of the employer are employed, a situation in which many domestic workers find themselves.

More generally, the hours of work and rest period restrictions are not enjoyed by most domestic workers. Even those who enjoy weekly breaks do so at the convenience of their employer and in some cases work which should have been done during their break periods remains to be done when they return.¹⁵ It has been suggested by a leader of the TUC that domestic workers would have been better protected by the *Industrial Relations Act*, Act 299 of 1965, which, for instance, allowed the TUC to take up cases of abuse irrespective of whether the affected workers were unionised or not. However, the *Act* was repealed by the *Labour Act* of 2003, which restricted unions to dealing with issues only concerning their members.¹⁶

In any case, several of the labour laws provisions which do apply to domestic workers are routinely breached. Section 12 of the *Act* requires written contracts for all employment of 6 months or more, including employment equivalent to six months or more within a year. Few domestic workers, usually only those recruited through private or public employment agencies, have written contracts, either with the employer or between the agency and employer on their behalf. In addition to low wages, as well as idiosyncratic wage and in-kind remuneration arrangements, domestic workers are routinely not provided with statutory benefits, such as social security contributions, or paid sick, annual, and maternity leave. Regarding health benefits, some employers provide medical care for routine illnesses, but do not assume responsibility for serious illness or pregnancy, conditions that could result in the termination of employment. Live-in domestic workers are sometimes provided accommodation in the out-house (known as the boys' quarters from a period when domestic workers were largely male) or in a room in the main house. Such accommodation is sometimes shared and can be of indeterminate quality, as there are no clear regulations about the quality of housing for domestic workers. Domestic workers are also verbally promised meals which are often not delivered in terms of frequency and quality. Only a small minority of domestic workers recruited by companies and foreign nationals enjoy several of these benefits. Not surprisingly,

¹⁵ Tsikata, *supra* note 13 at 5; Labour Research and Policy Institute of Ghana, *Domestic Workers in Ghana* (Accra: Trade Union Congress).

¹⁶ Interview of Dr. Anthony Yaw Baah, Deputy General Secretary, Trade Union Congress (2009) Accra.

domestic workers routinely claim to have worked for foreigners as a bargaining chip in wage negotiations.¹⁷

Both the *Children's Act* and the *Domestic Violence Act* have provisions relevant to the regulation of domestic work: the former specifies the age of majority for the purposes of work and the latter offers domestic workers protection from endemic workplace violence. Regarding child domestic workers, the *Children's Act* of 1998 (Act 560) prohibits exploitative labour, and makes clear that child labour is exploitative when it deprives the child of health, education, or development (section 87). This is supported by article 28 of the *Constitution*. Under section 89, the *Act* provides that the minimum age for employment is 15. Section 13 of the *Act* protects children from torture and other cruel, inhuman, or degrading treatment including cultural practices which dehumanize or injure the physical and mental wellbeing of the child.

Enacted in 2007, the *Domestic Violence Act* (Act 732 of 2007) aims to prevent and reduce the incidence of domestic violence and afford redress to those who experience such violence. The *Act* prohibits all forms of violence occurring in the household environment. This includes acts of physical assault and sexual harassment. Domestic workers are included in the definition of the domestic relationship, and are therefore covered by the *Act*. The *Act* defines domestic relationships in article 2 (1) as follows: “a domestic relationship means a family relationship, a relationship akin to a family relationship or a relationship in a domestic situation that exists or has existed between a complainant and a respondent.” “House-help” is listed in the specification of possible domestic relationships (section 2 (1)(h)).

2.1 The customary law and practice of domestic work

The customary¹⁸ law of domestic work consists of a set of dynamic practices around recruitment, terms and conditions of service, and grievance procedures which are unwritten but have developed over the years. Customary laws are used at any point in time to regulate domestic work, albeit imperfectly because they are voluntary and do not have robust enforcement mechanisms. However, it would be a mistake to discount them, given how widely practised they are. For

¹⁷ *Supra* note 4; Labour Research and Policy Institute of Ghana, *supra* note 15 at 7

¹⁸ Adelle Blackett, “The Decent Work for Domestic Workers Convention and Recommendation, 2011” (2012) 106:4 AJIL 778, uses the term “the law of the home workplace” to draw on a pluralist labour law framework of analysis. For this report, I prefer to use the older term customary law and practice to draw attention to the non-state, quotidian and contingent character of the set of rules and practices I am discussing.

example, the wages demanded by people looking for domestic workers are increasingly uniform in certain localities although often subject to downward negotiation by employers.

There are several methods of recruitment of domestic workers. These include direct hiring, recruitment through friends and family, the use of informal agents, formal private agencies, and public-sector employment offices. Apt, for example, found that 20% of her respondents were recruited through their relatives, 40% through friends and neighbours of their employer, 16% through their employers' relatives, while 18% of domestics had gone to their employers directly.¹⁹ A 2009 study of three hundred and nineteen domestic workers determined that 266 (83.4%) found their current jobs through family and friends, while 50 (15.7%) used a formal agency.²⁰ This suggests that traditional informal arrangements for procuring domestic workers have endured, with only a small minority using employment agencies. It is pertinent to note that some employers oscillate between formal and informal recruitment practices from one domestic worker to the next. A major change in recruitment is represented by the entry of paid middlemen and informal agents into the recruitment process.²¹

Informally mediated recruitment arrangements come in various forms. Mediators could be near or distant family members, neighbours, friends, and in some cases, informal agents, who link up domestic workers and their potential employers and sometimes assist in the negotiation of terms. For example, a family member living in an urban area, or another rural area, could be tasked with finding a position for young persons living in their hometown. Such a person could also initiate the process by alerting their relations in rural and poor urban areas about the possibility of domestic work in another neighbourhood, locality, or even region, and assist in the delivery of the domestic worker to an employer. If things work out, the mediator is identified through word of mouth as able to procure domestic workers, leading to future requests. On the supply side, they come to be identified as persons who can secure domestic positions for young persons in need of such work. In time, their reach extends beyond their own relations to other members of their community and even neighbouring communities. Such persons might perform this service of linking potential domestic workers with employers without remuneration, but might get their expenses paid by both sides. Others might establish themselves as informal agents who are paid

¹⁹ *Supra* note 3 at 4.

²⁰ Akosua Darkwah & Dzodzi Tsikata, "Mapping of Employment Agencies in Accra, Kumasi and Tamale" (Research Report delivered at the Launch Workshop for the CEGENSA Project on the Changing Character of Women's Work in Ghana, April, 2009) [unpublished].

²¹ *Supra* note 3 at 4; Dzodzi Tsikata, "Employment Agencies and the Regulation of Domestic Workers in Ghana: Institutionalizing Informality?" (2011) *CJWL* 21:1 213.

for their services. Agents usually have communities from which they recruit domestic workers, selected because of affinity, proximity, ease of entry, association with a large supply of potential domestic workers and other such considerations. The mediation of agents in the recruitment of domestic workers has not changed the largely informal character of domestic work. Formal agents, though operating on a different legal basis, do not appear to be very different from informal agents in their practices, and often rely on informal agents to supply their pool of potential employees.²²

In keeping with the informality and specificities of recruitment mechanisms, the terms and conditions of service are specific to each recruitment. At the same time, certain practices are quite common and distinguish different kinds of domestic workers (for example, family members versus strangers) from other kinds of workers. For example, terms and conditions are sometimes not made explicit at the start of a domestic work relationship, particularly in situations where the domestic worker is a minor and the negotiations are being conducted on her behalf by her parents or their representatives. Under those circumstances, the prospective employer is given the freedom to decide how to reward the domestic worker.

A related aspect of the customary law of domestic work relates to the job description of domestic workers, which is largely verbal, except in a few cases when agencies put it in writing. An examination of job descriptions of domestic workers in Ghana has found that while there were variations related to the character of the employer's household and its needs, in general, domestic work had core duties: cleaning, washing clothes, shopping, cooking, and childcare. Those working for families in poor urban areas and rural areas also had to fetch water and fuel wood, while those working in households with sick or elderly people were expected to also contribute to their care. Those working for traders often had to support their employers with those activities.²³

In terms of pay arrangements, a recent survey of domestic workers found that only 35.5% of respondents said they were paid solely in cash, 25.8% said they were paid in kind only, and 37.4% said they were paid in both cash and kind. Less than 1% listed another type of payment, while a single respondent (0.3%) did not know the method by which they were paid. More than half of those paid in cash (56.7%) received their wages monthly, whereas a third reported receiving their wages daily. An equal number of respondents (almost 4%) received their wages weekly or yearly.

²² Tsikata, *supra* note 21.

²³ *Ibid*; Tsikata, *supra* note 13 at 9.

Almost 3% of the respondents said that they received wages at any time, since there were no fixed intervals for their wages.²⁴

A common practice in the domestic work relationship is the send-off given to domestic workers when they leave an employer after several years of service. A study of employers found that employers considered this to be an important part in terminating the domestic work relationship, even in situations of conflict or disagreement between the employer and employee. While the send-off was in some cases a fulfilment of agreements reached before the start of the relationship, it was generally justified in terms of decency and reciprocity rather than contractual obligation.

2.2 Labour and labour related institutions

There are several labour institutions deriving their legitimacy from the *Constitution* and the labour laws. The Ministry of Manpower, Youth and Employment is responsible for all issues pertaining to work and employment. However, it does not directly deal with workers and their labour issues. Instead, it has several Departments and Commissions which deal with these issues and report to the Ministry. Under the Ministry there are the Labour Department, the Labour Commission, and the Department of Social Welfare. Under the now repealed Labour Decree of 1987, industrial relations disputes were settled by the Ministry of Labour through the Labour Department headed by the Chief Labour Officer. Under the new *Labour Act* of 2003 this task has fallen to the Labour Commission. Established by the *Labour Act*, the National Labour Commission is composed of a chairperson nominated by the employers' organisation, organised labour, and representatives from the three parties of the labour regime: two from government, the employers' organization, and organised labour respectively. The Labour Commission opened its doors in April 2005. Currently, the Commission has only one office in Accra, but has plans to set up offices in other regions in the country in fulfilment of its mandate to establish Regional Committees.

The Commission's main functions are to settle disputes, facilitate the settlement of industrial disputes, investigate labour related complaints such as unfair labour practices, and take steps to prevent labour disputes. It also maintains a database of qualified persons to serve as mediators and arbitrators and promote the effective cooperation among institutions in the exercise of its adjudicating and dispute settlement function (section 138).

²⁴ *Supra* note 2.

In settling disputes, the Commission has the powers, privileges, and immunities of the High Court in respect to calling witnesses, examining them, and compelling the production of documents. The Commission has the power to receive complaints from the three parties on industrial disagreements or allegations of infringements of the *Act* and its regulations. It also has the power to require an employer to provide information and statistics concerning its workers and their terms and conditions; require a trade union to provide it information it considers necessary; and notify employers and their organisations, workers, and trade unions of contraventions of the *Act* and its regulations, and direct them to rectify such violations (section 139 (1)).²⁵

The Labour Department, established in 1938, is an arm of the Ministry of Manpower, Youth and Employment. It aims to promote national development by ensuring that basic labour laws and conventions are adhered to, and promote income distribution and industrial peace. When it was established, its functions included monitoring the development and tendencies of trade unions, examining the position of low paid workers, and taking care of the transportation of workers who came from outside the capital. A number of these functions have changed over time, but the core responsibility of enhancing industrial relations has remained. Currently, the Labour Department is run by a chief Labour Officer and an estimated 148 labour officers and inspectors of varying seniority. The Department has offices in all ten regions of Ghana. Among its functions is the registration and placement of job seekers, some of whom are domestic workers. Their statistics about job placements are not disaggregated by occupation, only by gender. It was therefore impossible to determine how many domestic workers they have placed and what proportion of placements this formed. The Department does not have a unit or officer who deals specifically with domestic work, nor does it have a policy directed at regulating domestic work in Ghana.

Previously, the Department was responsible for the settlement of disputes between workers and their employers, however with the establishment of the Labour Commission, this responsibility has been taken away. The Labour Department has continued to settle such disputes, but does not keep records of this activity. The Department was, before the new *Labour Act*, the sole agency for

²⁵ In an interview, an official of the Commission argued that since the *Act* under which the Commission was established did not distinguish between various types of workers, the Commission was dealing with individual cases and not with categories of workers. The Commission therefore did not have officers who were responsible for particular categories of workers. It was also not possible to get a breakdown from the Commission of the cases it had been dealing with since it was established. This official argued that the issues of domestic workers should be handled by the Ministry of Manpower, Youth and Employment, particularly their Departments of Social Welfare and Labour. Interview of Edward Briku-Boadu, Office of the Executive Secretary, National Labour Commission (2014).

registering and recruiting job-seekers. Since the *Act* now recognises private employment agencies, the Department oversees the licensing of private employment agencies for the Ministry.

The Department of Social Welfare was established in 1943, during the colonial days. Its main functions are child rights protection and promotion, and community care, which involves hospital care, vocational training - especially of the disabled - and caring for the destitute. It has no officer or unit devoted to domestic work and does not have a single policy directed at regulating domestic work. In fact, the Department does not have any specific dealings with domestic workers. It only encounters domestic workers and their employment agencies when cases of abuse arise, especially when it involves children.

The Department runs the Shelter for Abused Children, which operates under the *Children's Act*. The *Act* empowers the Social Welfare and Community Development Department of a district assembly to investigate cases of violations of children's rights. Article 16 (2) gives the Department the mandate to give care and protection to children. This facility was established in 2003 to provide shelter for abused, missing and run-away children who had come to the attention of the Domestic Violence and Victim Support Unit (DOVVSU)²⁶ and the Department for Social Welfare.

3. Innovation I: The DOVVSU courts and the cases of domestic workers

As previously noted, the *Domestic Violence Act* protects a person who is a domestic worker in the household of the respondent (subsection 1 para. (i) of *Act 732, 2007*). In determining whether there is a domestic work relationship, the court will consider the amount of time the persons spend together, the place where that time is ordinarily spent, the way that time is spent, and the duration of the relationship (subsection 2).

Some of the *Domestic Violence Act's* core measures include the establishment of a Victims of Domestic Violence Support Fund (section 29), which is used to contribute to the basic material support of victims of domestic violence; the training of the families of victims of domestic violence; the rescue, rehabilitation and reintegration of victims of domestic violence; the construction of reception shelters for victims of domestic violence in regions and districts; and for training and capacity building of persons connected with the provision of services for victims. Section 35 establishes a Victims of Domestic Violence Management Board to make

²⁶ Then known as the Women and Juvenile Unit (WAJU).

recommendations for a national plan of action against domestic violence; monitor and report on the progress of the plan; advise the Minister of Gender and Social Protection on relevant policy matters; propose and promote strategies to prevent and combat domestic violence; work with government agencies and organisations to promote the rehabilitation and reintegration of victims of domestic violence; manage the victims fund; conduct research; and deal with any matter concerned with domestic violence. Sections 6 to 28 of the *Act* are concerned with the powers and processes of the police and courts to prosecute and remedy instances of domestic violence. The police have established DOVVSU units across the country to implement the *Act*, while the judicial services have established DOVVSU courts to try cases of domestic violence.

An examination of over 120 DOVVSU court cases heard between 2008 and 2014 found 36 cases involving domestic workers. Of the 36 cases, 90.7% of the victims were female and 60% were between the ages of 1 and 20. In relation to the accused persons, 70.9% were female and 29.1% male (Table 1 below).

These court cases represent only a fraction of the cases brought before DOVVSU. There are suggestions that there are many more cases involving violence against domestic workers that have been reported to DOVVSU than would ever come to court.²⁷ This suggests that the passage of the Act and the establishment of DOVVSU have been important for increasing public awareness of the widespread nature of violence against domestic workers.

Table 1: Gender and the ages of the victims

Age of Victim	Gender		Number of Victims	Percentage of victims
	Male	Female		
1-10	0	5	5	11.7
11-20	2	19	21	48.8
21-30	1	1	2	4.6
31-40	0	0	0	0
41-50	1	1	2	4.6
Others	0	13	13	30.3
Total	4 (9.3%)	39 (90.7%)	43	100

²⁷ Interview of Barbara Ayesu and Sheila Menkah-Premo, LAWA Ghana, January 14 2014, Accra

Source: Computation of DOVVSU Statistics, Accra, 2008-2014

The *Act's* provisions are promising for the regulation of domestic work and for the redress of some of the common infractions against domestic workers. For example, its definition of domestic work is broad and encompasses physical, sexual, economic, emotional, and verbal abuse.²⁸ In my work on employer perspectives on domestic work, I had argued that the Labour Act was so general and geared toward Fordist work traditions that it failed to provide for the particularities of domestic work. Some of those issues are included in the *Domestic Violence Act* as acts of violence. Examples of such treatment include: the deprivation of access to adequate food, water, clothing, shelter, or rest; inhuman or degrading treatment or punishment; forceful sexual conduct that abuses, humiliates, degrades or violates sexual integrity; the deprivation or threatened deprivation of economic or financial resources, which a person is entitled to by law; and emotional, verbal, or psychological conduct that makes another person feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery, depressed, inadequate, or worthless. Furthermore, the *Act* mentions harassment, defined to include sexual harassment and intimidation by inducing fear in another person; conduct or behaviour that harms or may harm another person; endangers the safety, health, or well-being of another person; undermines another person's privacy, integrity, or security; detracts or is likely to detract from another person's dignity and worth as a human being (section 2). Discussions about the regulation of domestic work have raised the issue of restoring dignity to domestic workers.²⁹

In practice, the cases brought to the DOVVSU courts on behalf of domestic workers cover a rather narrow range of issues: 53% of the 36 cases involved defilement of a child under 16, while 8% of cases were about causing unlawful harm, indecent assault and human trafficking. The large

²⁸ To paraphrase, the *Act's* definition of domestic violence includes a) physical abuse e.g. assault, force, confinement, detention, deprivation of access to adequate food, water, clothing, shelter or rest, torture or other cruel, inhuman or degrading treatment or punishment; b) sexual abuse defined as forceful sexual conduct that abuses, humiliates, degrades or violates sexual integrity, sexual contact by a person aware of being infected with human immunodeficiency virus (HIV) or any other sexually transmitted disease without prior information of the infection; c) economic abuse, which includes the deprivation or threatened deprivation of economic or financial resources which a person is entitled to by law, the disposition or threatened disposition of moveable or immovable property in which another person has a material interest and hiding or hindering the use of property or damaging or destroying property in which another person has a material interest; and d) emotional, verbal or psychological abuse i.e. conduct that makes another person feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery or depressed or to feel inadequate or worthless. Harassment is defined as including sexual harassment and intimidation by inducing fear in another person; and conduct or behaviour that harms or may harm another person, endangers the safety, health or well-being of another person, undermines another person's privacy, integrity or security, or detracts or is likely to detract from another person's dignity and worth as a human being.

²⁹ Adelle Blackett and Dzodzi Tsikata, "Vulnerable Workers" in Frédéric Mégret et al, eds, *Dignity: A Special focus on Vulnerable Groups* (Montreal and London: McGill CHRLP & LSE, 2010) 59.

percentage of defilement cases implies that domestic workers in these cases are minors, which explains why most (77.8%) of complainants are not the victims themselves, but instead are either guardians or concerned neighbours. Furthermore, the three largest categories of complainants were relatives of domestic workers (33%), employers (25%), and neighbours (13.9%), whereas domestic workers themselves made up only 22.2% of respondents (Table 4).³⁰ These statistics are connected to the substantial number of cases that involved minors. Until more domestic workers report abuses to the police themselves, the range of possible complaints will remain significantly under-utilised.

The sensitivities and silences around issues of child defilement³¹ mean that guardians are sometimes hesitant about reporting the matter to outsiders, such as the police. Even when reports are made, the outcome of trials are uncertain. Out of the 21 defilement cases, only 5 resulted in convictions. In the case of the *Republic v. Amos Asante*,³² a 77-year old man, Amos Asante, was accused of defiling a 14-year old female child. The accused was a retired clerk and the complainant, who was the victim's father, was related to the accused's wife. The victim stayed with the accused and his family for a period of two and a half years. During the year 2010, the accused had sexual intercourse with the victim on three different occasions, the last time in December 2010. The accused warned her not to disclose the incidents to anybody, and the victim complied. However, the victim got pregnant and revealed that the accused was responsible, when she was questioned. The accused was confronted but he denied having sexual intercourse with the victim. A report was made to the Odorkor police station. The accused was arrested, and the case was transferred to the DOVVSU/AR police. After investigations, the accused was charged with the offence. However, after the trial the accused was acquitted and discharged after his counsel entered a no case submission.

³⁰ It is pertinent to note that in only four of these cases was the domestic worker a victim of violence. In the other four cases, the domestic worker was the accused person, and the complainants were three employers and a neighbour of the domestic workers. In one case, a domestic worker conspired with his male employer to deny his wife access to shelter by removing her louvre blades on the windows and the doors of her house. In a second case, a male domestic worker helped his male employer and his relative to beat up his wife. In the third case, a female domestic worker was accused of stealing her female employer's personal belongings. Finally, in the fourth case, a male domestic worker was accused of attempting to rape a neighbor (DOVVSU court cases, 2008-2014).

³¹ Defilement is a crime defined under section 101 (1) of the *Criminal Offences Act*, No. 29 of 1960 as "[...] the natural or unnatural carnal knowledge of any child under sixteen years of age." Section 101 (2) provides that: "Whoever naturally or unnaturally carnally knows any child under sixteen years of age, whether with or without his or her consent commits an offence and shall be liable on summary conviction to imprisonment for a term of not less than seven years and not more than twenty-five years."

³² *Republic v. Amos Asante* (2010) D12/35/12.

In the case of the *Republic v. Michael Kwasi Boakye*,³³ the complainant was the landlord living with both the accused and his domestic worker, the victim in this case. The victim's work was to run errands for the accused and his wife, care for their 2-year-old daughter, and cook for them. On June 16, 2011, at about 8:00pm, the accused took advantage of his wife's absence and requested the victim buy him fried eggs from the roadside. On her return, the accused lured her into his room and attempted to defile her, but was unsuccessful. On July 5, 2011, at about 1:00pm, the accused again sent the victim to buy him fried eggs and on her return, the accused once more lured her into his room and forcibly had sexual intercourse with her. A report was made by the landlord and the victim was taken to the hospital for examination. The accused was arrested by the complainant and handed over to police and processed for court, but was later discharged by the court on account that the complainant was no longer interested in pursuing the case.

Neighbours are both perpetrators of domestic violence and complainants in some of the cases. Neighbour perpetrators of domestic violence often take advantage of an employer's absence from the house during the day. In the case of the *Republic v. Samuel Kofi Ackom Amisah*,³⁴ a carpenter, Samuel Ackom, residing in Madina Zongo Junction, defiled a 14-year-old domestic worker residing in Abokobi-Boi, a suburb of Madina. On April 4, 2011, at 11:00am, the female employer of the domestic worker went out, leaving the victim in the house to do her household chores. The accused was roofing an uncompleted building adjacent the complainant's house, with colleagues. On noticing the absence of the employer, he jumped over the wall and entered the house. He dragged the victim into the bedroom and forcibly had sexual intercourse with her. The employer returned home and noticed the victim was in distress. On interrogation, she revealed what had happened. Her employer reported the matter to the police, who issued her a Medical Report Form to visit the hospital for examination and treatment. The accused was arrested and after investigation, he was arraigned before court. The accused was convicted of the offence and sentenced to 9 years imprisonment with hard labour.

The case of the *Republic v. Ella Appiah Kubi*³⁵ is a good illustration of the neighbour as a complainant in situations where an employer is engaged in domestic violence. Ella Appiah Kubi, a trader and a child guardian, was accused of intentionally and unlawfully causing harm to a primary 3 pupil, Hannah Abrekeye Boakye, who was a 9-year-old foster child under her care. The victim, Hannah, was living with her mother in Assin Brofoyedu in Central Region. When

³³ *Republic v. Michael Kwasi Boakye* (2012) D12/17/12.

³⁴ *Republic v. Samuel Kofi Ackom Amisah* (2011) D12/128/2011.

³⁵ *Republic v. Ella Appiah Kubi* (2013) D8/150/13.

her mother passed away, her elder brother, Taylor Nicholas, travelled to their hometown and brought Hannah to stay with the accused to continue her education in Accra. The evening of June 23, 2013, the accused claimed that Hannah stole food and meat, so she hit Hannah's head against the kitchen cupboard and subjected her to severe beatings with a mobile phone chargeable wire, shoes, and a spatula used for cooking the maize meal staple, *banku*.

The morning of June 24, 2013, the accused sent the victim to go and buy cooked rice and beans (*vaakye*). A neighbour, Yaw Dwomoh, questioned the victim about her swollen left eye and ear. The victim then showed him the multiple scars on her body. He followed the victim to her house and confronted the guardian, who denied that she was responsible. Yaw Dwomoh took the victim to the Police Station and made a report to the DOVVSU desk in Odorkor. The victim was taken to the Police Hospital for examination and treatment. Based on the medical report, the accused was arrested. During interrogation, she admitted to the offence and was put before the court. She was sentenced to a fine of twenty penalty units.³⁶ She was further ordered to pay thirty-four penalty units to the victim as compensation. The victim was also to be taken away from her and handed over to her biological father. A default on the compensation would result in a prison term of ninety days. It is clear in this case that but for the intervention of the neighbour, the victim would have had no recourse for redress.

Table 2. Nature of crimes in the charge sheet by percentage of total crimes

Nature of Crime	Number of Cases	Percentage
Defilement of a child under 16 years of age	21	58
Indecent Assault	3	8
Causing Unlawful Harm	3	8
Stealing	1	3
Unnatural Carnal Knowledge	1	3
Causing physical abuse to wit: Depriving another person of access to adequate shelter & Causing emotional abuse	1	3
Human trafficking	3	8

³⁶ The monetary value of punishment. One unit is 12 cedis (USD 2.5). The *Fines Act* of 2000 (Act 572).

Abduction of unmarried female under 18 years & Defilement of a child under 16 years of age	1	3
Child stealing, Causing unlawful harm, Abetment of crime and Deceit of public officer	1	3
Criminal Abortion	1	3
Total	36	100

Source: Computation of DOVVSU Statistics, Accra, 2008-2014

Table 3. Percentage of cases in which victim is not the complainant

Complainant	Number of Cases	Percentage
Victim not the Complainant	30	83
Victim is the Complainant	6	17
Total	36	100

Source: Computation of DOVVSU Statistics, Accra, 2008-2014

Table 4. Gender of complainant by relationship between complainant and victim

Relationship between Complainant and victim	Gender			Total	
	Male	Female	Not specified		
Neighbour	3	1	1	5	13.9
Employer/Employer's relative	1	8	0	9	25
Relative	6	6	0	12	33.4
Other Official	1	0	1	2	5.5
Self (complainant is victim)	3	4	1	8	22.2
Total	14 (38.9)	19 (52.8)	3 (8.3)	36	100

Source: Computation of DOVVSU Statistics, Accra, 2008-2014

The fact that prosecutions are largely based on the actions of persons other than the victims themselves may account for the fact that 39% of the cases were withdrawn because the charge could not be sustained, the complainant was no longer interested, or the lack of prosecution. In 19.4% of the cases, the accused was sentenced to imprisonment, asked to pay a fine, or asked to

sign a bond of good behaviour, while in 25% of cases, the accused was acquitted and discharged (Table 5). There have been suggestions that parents and family members are paid off to withdraw prosecutions. This is linked with the social embeddedness of domestic work relationships and the persistence of a kinship idiom in discourses around domestic work.³⁷

A 2011 case, the *Republic v. Simon Ebo Banson* (first accused) and *Josephine Hodo* (second accused),³⁸ was discontinued on grounds of withdrawal by the prosecutor with no stated reason in the docket. The first and second accused were a Marketing Consultant and an Information Communication Technology Specialist respectively. The 19-year-old victim, Afua Dansowaa, was their domestic worker. In May 2011, the accused, a married couple, claimed that their domestic worker was conspiring with others to burgle their house. She denied the allegation, but the accused took her to the Dansoman Police Station, where she was detained and later released to the accused who took her back home. On reaching the house, the accused locked up the victim, their domestic worker, in the toilet and continuously assaulted her.

The toilet became her dwelling place. On September 20, 2011, the first accused dragged the victim from the toilet to the couple's bedroom and used a hot-pressing iron on her back several times, causing severe burns. The first accused then cut her indiscriminately with a cutlass, resulting in wounds all over her body. On October 29, 2011, at about 2:00 pm, the first accused again dragged the victim from the toilet to the bedroom, locked the door and used a wooden board to hit the victim's left leg, leading to a fracture and causing her to fall to the floor. The second accused stood in support of the first accused during this incident.

On October 30, 2011, at about 8:00am, the domestic worker's brother, Akwasi Asiedu, the complainant, decided to visit his sister whom he had not heard from for a while. On reaching the house, the first accused immediately accused him and the victim of conspiring to burgle his house. The first accused pulled a gun on the witness and compelled him to kneel from 12:00pm to 2:00pm, threatening to shoot him if he got up. Again, the second accused stood by and supported the first accused. When the complainant was finally released and asked of the whereabouts of his sister, the first accused told him that he sent the victim to a prayer camp as she was sick. Suspecting that something sinister might have happened to his sister, the complainant reported the matter to the Dansoman Police. The police inspected the home of the first and second accused and found the

³⁷ *Supra* note 4.

³⁸ *Republic v. Simon Ebo Banson and Josephine Hodo* (2011).

victim in a critical condition. The police rushed her to the Police Hospital where she was referred to Korle-Bu Teaching Hospital due to the seriousness of her condition.

Table 5. Verdicts in cases involving Domestic Workers

Verdict	Frequency	Percentages
Accused sentenced to imprisonment	4	11.1
Accused acquitted and discharged	9	25
Withdrawal of case	6	16.8
Charge cannot be sustained	2	5.5
Case adjourned	2	5.5
Accused fined	2	5.5
Lack of prosecution	4	11.1
Complainant no longer interested	4	11.1
Accused sign bond of good behavior	1	2.8
Accused on remand	1	2.8
Case under investigation	1	2.8
Total	36	100

Source: Computation of DOVVSU Statistics, Accra, 2008-2014

The case was transferred to the DOVVSU Police and the accused were arrested. Both accused were charged with conspiracy to commit a crime to wit. The second accused was charged with causing harm including separate counts of abetment of crime and the first accused was charged with causing harm. However, the case was withdrawn by the prosecutor and both accused were discharged. There was no indication on the docket as to why the case was withdrawn. While the *Domestic Violence Act* is no substitute for an amended *Labour Act*, which addresses the particularities of the conditions of domestic work, it contains helpful provisions for redressing instances of violence in the domestic work relationship; future labour legislation must address this neglected issue. The situation also draws attention to the possibility that the comprehensive regulation of domestic work may require that some of the issues facing domestic workers will also be addressed by laws designed primarily for purposes other than domestic work.

4. Innovation II: The Domestic Services Workers Union (DWSU)

4.1 The history of organising domestic workers

The ICU effort (1990s)

Until recently, the Trades Union Congress of Ghana (TUC) was the sole legally recognised centre for organised labour in Ghana.³⁹ Made up of 17 national unions, its membership largely consists of employees in the formal public and private segments of the economy, which accounts for no more than 20% of the labour force in Ghana. The TUC has a history with informal economy workers, which is not evidenced in its current structure and composition. It has been noted that the beginning of trade unionism in Ghana was found in efforts to organise informal sector workers after the first World War, notably agricultural labourers, cooks, motor drivers, mechanics, goldsmiths, and other artisans. However, in its evolution, urban formal sector workers came to dominate the TUC.⁴⁰ Among the seventeen national unions of the TUC, one, the Ghana Private Road Transport Union (GPRTU), is an organisation of the informal sector, composed of vehicle owners, owner drivers, employee drivers, and guards in charge of running lorry stations and ensuring that the tax obligations of vehicle operators are met. Dominated by vehicle owners and their concerns, the GPRTU has been a mixed success in the organisation of the informal economy.⁴¹

In 1996, The TUC Congress responded to its dwindling membership by adopting a policy to encourage its affiliates to organize in the informal economy. They were “to intensify and strengthen participation and organization of both formal and informal sectors... and to continue to forge contacts with informal sector associations and to organize the unorganized workers in the informal sector.”⁴²

³⁹ In 2003, the new *Labour Act*, Act 651 of 2003, opened the way for alternative labour centres in Ghana. So far, there is only one other labour centre established by a breakaway national union of the TUC.

⁴⁰ Kwasi Adu-Amankwah states that: “Organizing informal sector workers requires nurturing dynamic links with the relevant public authorities and institutions, both national and international, that can provide the necessary support” in *Trade unions in the informal sector: Finding their bearings* (1999) 3:116 Labour Education.

⁴¹ Kwasi Adu-Amankwah, “Economic Liberalization, Informalization of Work and the Informal Economy: Losing the Battle for Decent Work?” (ISSER/Merchant Bank Development Seminar Series delivered in Accra, Ghana, February 2007) [unpublished]. Adu-Amankwah notes that while the GPRTU mediates and resolves conflicts between hired drivers and the owners of vehicles, its driver members lack social security protection. This lack of protection includes: job security, health care, the promotion of occupational health and safety, protection against income losses during sickness, annual leave, minimum wage etc.

⁴² A.Y. Baah, “Organizing in the Information Economy: Experiences and Lessons from Africa, Asia, and Latin America” (Paper delivered at the Ghana Trade Union Congress/LO/FTF (Denmark) Project, November 2006) [unpublished]. See *supra* note 40 for details of the policy directions taken by the TUC in this regard.

Kwasi Adu-Amankwah, who was, until the end of 2007, the Secretary General of the TUC of Ghana, argued that organising informal economy operators, whether in trade unions or as cooperatives or associated producers, presents the possibilities of applying laws and minimum standards to their operations and existence. It also provides the opportunity for them to secure representation and achieve collective bargaining for their interests.⁴³ On the part of trade unions, they stand to benefit from increased membership, finances, greater legitimacy in representing a wider range of workers, and therefore the ability to intervene more strongly in national policy processes.⁴⁴

Before the policy shift of 1996, associations of informal economy operators were either affiliated directly with the TUC or through one of its national unions. Apart from the Ghana Private Road Transport Union (GPRTU), which is a full-fledged National Affiliate, four of the national unions have associations of the informal sector: the Industrial and Commercial Workers Union (ICU), which encompasses the Ghana Hair Dressers and Beauticians Association (GHABA) and the Ghana Batik, Tie and Dye Association (GBTDA), among others; the Timber and Woodworkers Union (TWU), which encompasses the Wood Working Machine Owners Association (WWMOA), Small Scale Carpenters Association (SSCA), and the National Sawyers Association (NSA); and the Public Services Workers Union (PSWU), which encompasses the Ghana Union of Professional Photographers (GUPP). Some self-employed women's organizations in the rural and peri-urban area, such as the Manchie Women's Cassava Processing Group, also became affiliates of the General and Agricultural Workers Union. In 2005, the Executive Board of the TUC agreed to give associate membership status to the Makola Traders Union and the Madina Traders Union, both market associations operating in Accra.⁴⁵

The strength of this approach to garnering new membership was that already formed associations were absorbed into the TUC. It guaranteed an immediate supply of numbers and dues. GAWU for example had organised over 12,000 members under its Rural Workers Organisational Division by 1998 while the Timber and Woodworkers Union also organised 12,000 informal sector members in various regions.⁴⁶ Baah notes, however, that the policy, which has seen the TUC and

⁴³ Adu-Amankwah, *supra* note 40.

⁴⁴ *Ibid.*

⁴⁵ *Ibid* at 7-10.

⁴⁶ *Ibid.* The national unions involved in organising in the informal economy have each provided several of the following forms of support: credit facilities, financial support, education and training; support for accessing markets; raised awareness about rights and standards and collective bargaining. These services were identified

its affiliates organizing through existing informal economy associations, has had limited successes.⁴⁷ Some of the challenges TUC members have faced in this regard are the low financial returns on organising in the informal economy, the lack of a ready package of benefits, and the lack of experience on both sides.⁴⁸ This is not surprising, given that most of these were organizations of self-employed persons with needs and challenges quite distinct from bread and butter union issues which had long been the tradition of the TUC. In choosing this approach, the TUC was neglecting the needs of what should be its constituency - employees in the informal economy - while also making common cause with employers. While it would have been more difficult to organize the employees of self-employed persons in the informal economy, it would have been more sustainable in the long run.

The Industrial and Commercial Workers Union (ICU) of the TUC, tasked its Informal Economy Unit with organising self-employed informal workers. Currently, the ICU has three dues paying associations of hair dressers and beauticians, one of barbers and salon owners, one for weavers, and another for batik makers. It considers these efforts to be more successful than its effort to organise domestic workers, which began in the early 1990s. In 1991, it extended coverage to cooks and stewards, and later to other categories of domestic workers, including gardeners, drivers, private security, and baby sitters or nannies. The ICU's organisational structure for the informal economy starts from the zonal level, through the district, region, and up to the national level. The national level is an association affiliated to the Union.

The domestic workers in Accra were organised in three zones: Cantonments, Tesano, and Airport. Between the late 90s and 2003, when the Association was at its most successful, there were branches in 9 out of the 10 regions in Ghana and it had a dues-paying membership of about 1,200. However, the leadership of the Association and its membership was dominated by institutional domestic workers. For example, the National President for a long time was a cook employed by a Bank in the Ashanti Region.

According to the ICU, in addition to the huge financial cost involved in identifying and organising domestic workers, the Union initially faced strong resistance from both employers and the

in the 1996 policy as key to the organisation of informal economy operators, along with others such as legal protection, input supplies and social protection.

⁴⁷ Esther Kosi, "Welcome Address" (Founding Conference - Domestic Services Workers Union delivered at GNAT Hall, Accra, 23 September, 2015) [unpublished].

⁴⁸ *Supra* note 40 at 11.

domestic workers themselves. While employers resisted the moves to unionise domestic workers, domestic workers were suspicious, some accusing Union officials of acting as spies for their employers. Equally detrimental, were the many disputes between domestic workers and their employers and the costs of training and retraining domestic workers. Furthermore, the Domestic Workers Union did not progress to the levels of autonomy expected of the associations of informal economy operators affiliated to the ICU, and continued to have expectations of the ICU which the latter could not fulfil due to resource constraints. The Domestic Workers Union is now largely defunct, although its National President is represented on the National Executive Committee of the ICU, along with other representatives of the informal economy. This is expected to ensure that the concerns of domestic workers are incorporated into decisions of the Union at its highest levels.⁴⁹

4.2 Current efforts

In response to the global efforts to adopt *Convention No. 189*, the TUC appointed a focal person in 2013 to promote decent work for domestic workers and to support their efforts to organise. The focal person also undertook efforts to educate domestic workers about their status as workers with accompanying rights, and participated in the advocacy for Ghana's ratification of the *Convention No. 189*.

Drawing on the failed efforts of the ICU, the TUC's approach was to recognise that domestic workers had to be organised differently than other informal workers. For one thing, there was recognition of the lack of adequate regulation of domestic work and difficulties with visiting domestic workers in their workplaces. Therefore, the strategy was to create awareness of the new ILO Convention and educate domestic workers about its import on their working conditions. Working with a small group of domestic workers who were appointed organisers, the TUC mobilized about 400 domestic workers. Activities included float sensitization campaigns, the distribution of flyers to homes, media interactions, public invitations to meetings and asking existing members to bring friends along to sensitisation meetings, and training workshops organised for domestic workers.

⁴⁹ Interview with S. B. Alootey, Industrial Relations Officer, Industrial and Commercial Workers Union (ICU), 11 August, 2008, Accra.

The TUC focal person also worked with domestic workers to form an association, on the basis that as workers, they had the right to form a union. If it worked, the TUC expected to become the umbrella body, mainly providing information support services as it was doing for all its affiliates. The domestic workers' association would make its own decisions and could also decide whether to affiliate with the TUC after formation, because unions are supposed to be autonomous.

From the start of the TUC effort, the IUF, a federation of 336 Trade Unions in 122 countries representing over 12 million workers, became involved in the process through its Africa Regional Women's Project Coordinator, based in Accra. Adwoa Sakyi, who had worked for the General and Agricultural Workers Union (GAWU) of the TUC before assuming this post, was an experienced trade unionist steeped in the organisational aspects of the TUC. She became the chief champion and supporter of the effort to organise domestic workers. When the TUC stepped back from its lead role, the ITUC took it over, and linked the nascent union with the International Domestic Workers Network (IDWN) which it had been hosting since 2007. Meanwhile, the IUF's Africa Regional Women's Project, which Sakyi coordinates, also begun working with IUF affiliated unions in 16 African countries in a project to organise domestic workers and or advocate on their behalf.⁵⁰ In Ghana, the project worked closely with LAWA Ghana and the TUC on a series of activities: raising awareness, education, training, a recruitment drive, and making efforts to reach out to the general public, employers of domestic workers, and domestic workers themselves. A central message in this effort was the recognition of domestic workers as workers and that their rights must be respected.

The new union's involvement with both the IUF and the IDWN meant that the interim executives of the of the union participated in the founding conference of the IDWF in 2013 as an affiliate, and took up a leadership role as the West Africa representative on the Steering Committee of the African Domestic Workers Network (ADWN).

The DSWU was registered in 2014. On September 23, 2015, the DWSU held its founding conference, during which a new leadership was sworn into office, along with the adoption of a new Constitution and a four-year Strategic Plan. Other bodies that played a role in the establishment of the DWSU were acknowledged at the founding conference. This includes SASK, LAWA Ghana, the ILO, the Labour Department, and the affiliates of the IUF in Ghana.

⁵⁰ Adwoa Sakyi, "Solidarity Address" (Founding Conference - Domestic Services Workers Union delivered at GNAT Hall, Accra, 23 September, 2015) [unpublished].

Interestingly, the TUC was mentioned only after the IUF, IDWF, the SASK, ADWN, and ILO. Only the Labour Department and unnamed affiliates of the IUF in Ghana were mentioned after the TUC.⁵¹

The Chief Labour Officer and a representative of the Ministry of Employment and Labour Relations were both present at the conference, signaling state support for the new union. In several solidarity messages, it became clear that an emphasis was placed on domestic work as being “work like any other.”⁵² The Representative of the Ministry of Employment and Labour Relations said in his keynote address:

[The government of Ghana is committed to] ensuring that domestic workers have the same basic labour rights and social protection as those afforded other workers including effective and accessible complaints mechanisms, penalties for violations, payment of social security contributions, protecting domestic workers from harassment and violence, abuse, regulate private employment agencies that recruit and employ domestic workers and ensuring that domestic work by children above a certain age does not interfere with their education.⁵³

Their messages did not speak to domestic work being “like no other work.” As the solidarity message from the IDWF and AFDWN noted “the Society of Ghana and the world are being shown that domestic workers [are] like any workers, and that they can organize and form a democratic organization which can be led by them.”⁵⁴ This theme was extended to even the character of the organisation. The IDWF statement argued that unless domestic workers are organised just as other workers, they will continue to be poor and vulnerable.⁵⁵ The focus on domestic workers as workers like all others was a theme which was present in several of the

⁵¹ *Supra* note 47.

⁵² *Supra* note 4. Blackett has noted that domestic work has a dual character in being both work like any other, and work like no other. She argues that this duality must be inhabited and accounted for. The strategy for regulation therefore should be to recognise this duality and that in any case, domestic work is work. Addressing this duality also means recognising the social importance of domestic work as well that the need for special legislation to ensure equality of treatment.

⁵³ Claude Ewa, “Keynote Address” (Founding Conference - Domestic Services Workers Union delivered at GNAT Hall, Accra, 23 September, 2015) [unpublished].

⁵⁴ Myrtle Witbooi and Elizabeth Tang, “Solidarity Address” (Founding Conference - Domestic Services Workers Union delivered at GNAT Hall, Accra, 23 September, 2015) [unpublished]; Vicky Kanyoka, “Solidarity Address” (Founding Conference - Domestic Services Workers Union delivered at GNAT Hall, Accra, 23 September, 2015) [unpublished].

⁵⁵ Witbooi & Tang, *supra* note 54.

interviews for this study. It responds to the view shared by several respondents that one of the biggest issues facing domestic work was a pervasive sense that it was not work.⁵⁶

Both the Constitution and the Strategic Plan give some indication as to the character of the Union and its priorities. The Constitution defines a domestic worker as any person engaged in domestic work within an employment relationship. The Constitution lists four guiding principles in its preamble. The first is that domestic work is work and therefore domestic workers must enjoy the same rights as other workers; the second is that domestic workers are entitled to decent work and living conditions, in keeping with *Convention No. 189*, which must be enshrined in national law; thirdly, governments must implement equal legal protection of domestic workers; and lastly, domestic workers organisations are part of the global legal movement and will join forces with other workers to change power relations, determine their own economic and social destinies, and secure freedom, justice, well-being, security, and peace.⁵⁷ Article 3 of the Constitution lists three fundamental principles: 1) self organisation, united action, and solidarity, as essential means for protecting and promoting domestic workers rights, 2) education and training as the primary means of equipping domestic workers with information, knowledge, and ideas to defend and promote their rights and interests, and 3) internal democracy and the elective principle to govern the activities of the Union.

The Constitution lists eight objectives of the union: 1) building a strong organization, 2) promoting discipline, commitment to work, and high productivity among members, 3) promoting leadership of domestic workers within the labour movement, 4) promoting united action on matters of concern, 5) promoting good relations among members and between them and employers, 6) building solidarity with the labour movement and trade unions across sectors, especially with other organisations of workers in informal and precarious work, 7) promoting education, training, and retraining of members, and 8) securing and retaining employment for members.⁵⁸

Regarding methods and activities, the first priority is organising and or supporting campaigns to ratify *Convention No. 189* and implement its provisions. Others initiatives includes the following: the representation of domestic workers at national and international forums; research, education,

⁵⁶ Interview of TUC representative, Cynthia Maame Aba-Ananoo, Central Regional Secretary, 4 February, 2014, Accra; Interview of Labour College representative, Prince Asafu-Adjaye, Director of Research, 27 January, 2014, Accra.

⁵⁷ Domestic Services Workers Union, 2015

⁵⁸ *Ibid* at article 4.

and training for members and other stakeholders; recruitment and organisation of domestic workers; communicating with members; strategic campaigns to inculcate respect for the care-giving role of domestic workers; building alliances with trade unions and other stakeholders; and support in settling grievances, disputes, and disagreements to strengthen the relationships between domestic workers and their employers.

The structure of the Union demonstrates the continuing influence of TUC traditions and practices on the new Union. While it may be with an eye to future affiliation with the TUC, it has the result of establishing an organisation, no different from a traditional union, to organise workers identified as being difficult to organise through conventional means, because of their characteristics and the challenges they face at work.

The Union's Strategic Plan identifies three challenges facing domestic workers and the Union: 1) their difficulties with meeting and organising, due to inadequate resources, 2) potential members and employers' lack of knowledge of trade union benefits, and 3) inadequate leadership skills and weak organisational structures and systems. The main objective of the plan, that domestic workers are respected and their work is recognised in Ghana, is broken down into three specific objectives: 1) a strong union to promote workers' rights, 2) improved working conditions of domestic workers, and 3) improvements in the relationships between domestic workers and their employers.

Some of the expected results of the Plan include: a strong union with effective funding, an increase in membership from 520 to 2,000 by the end of 2018, access to resources to implement activities, employment contracts, improved wages, adequate social and legal protection (social security, occupational health and safety, sick leave, maternity leave, annual leave), and regulated hours of work. Further, it is expected that five hundred employees will have employment contracts, domestic workers will be able to negotiate the terms and conditions of their contracts, their rights will be upheld and respectful, and they will have cordial relations with their bosses. It is also expected that domestic workers will respect each other and act in solidarity, and that domestic workers and employers will be trained on the rights and responsibilities of domestic workers, including negotiation, lobbying, and advocacy. Four broad categories of activities are identified for implementing the Strategic Plan. They include: 1) training and education to build union strength,

2) advocacy and organisation to strengthen interest representation, 3) opening of national secretariat and regional offices, and 4) project management.⁵⁹

From the foregoing discussion, we can argue that the DWSU can play a catalytic role in strengthening efforts to improve the conditions of domestic workers and keeping the effort to ratify *Convention No. 189* on the front burner. While it may be too early to declare this effort a successful innovation, it offers lessons in how global processes in both the inter-governmental and non-governmental arenas can support national efforts in the absence of a national consensus, a strong constituency, and momentum on the ground. The DSWU is an example of an effort with potential to fundamentally change the conversation and landscape surrounding domestic work. At the same time, its genesis and progress point to the challenges of sustainability in the work to change the character of domestic work through effective regulation.

⁵⁹ Domestic Services Workers Unions, *Report on Founding Conference of Domestic Services Workers Unions (DSWU)* (Accra: DSWU, 2015).