

Employment Agencies and the Regulation of Domestic Workers in Ghana: Institutionalizing Informality?

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Les particuliers et les agents de placement informels contribuent depuis longtemps au marché du travail domestique au Ghana. Depuis les années 1990, les agences de placement officielles font également partie du paysage du travail. Dans le présent article, il est question des conditions de travail des travailleuses domestiques, du contexte dans lequel s'applique la politique d'emploi au Ghana et des méthodes utilisées pour l'approvisionnement de main-d'œuvre domestique. L'article traite surtout de la manière dont les agents et agences de placement contribuent à améliorer la situation des travailleuses domestiques. L'auteure soutient que l'entrée de ces agents dans le monde du recrutement de travailleuses domestiques a eu un effet limité sur le régime extrêmement informel et non réglementé de ce milieu, surtout parce qu'ils ne recrutent qu'une faible proportion de la main-d'œuvre domestique et parce que leur engagement se limite à fournir des travailleuses domestiques à des employeurs potentielles, laissant aux parties concernées le soin de négocier les conditions de travail. En l'absence de dispositions particulières régissant le travail des domestiques et celui des agents et agences de placement, et sans le regroupement organisé des travailleuses domestiques, les agences de placement ne feraient qu'officialiser le caractère informel du travail domestique au Ghana. L'article présente aussi une évaluation de certaines initiatives visant à améliorer la réglementation du travail domestique et l'organisation de la main-d'œuvre domestique.

Individuals and informal employment agents have long been involved in the procurement of domestic workers in Ghana. Since the 1990s, formal employment agencies have also become part of the landscape of work. This article examines the conditions of work of domestic workers, the employment policy context in Ghana, and the methods of procurement of domestic workers. Focusing on employment agents and agencies, the article examines their effectiveness in improving the conditions of domestic workers. I argue that their entry into the recruitment of domestic workers has had a limited impact on the highly informalized and unregulated domestic labour regime, due largely to the fact that they recruit only a small proportion of domestic workers and have limited their involvement to procuring domestic workers for potential employers, leaving the terms and conditions of work to be negotiated by the parties themselves. In the absence of specific regulations for domestic employment and employment agencies and agents, and without the self-organization of domestic workers, employment agencies would simply be

institutionalizing the informality of domestic work in Ghana. The article also assesses some initiatives to improve the regulation of domestic work and the organization of domestic workers.

Introduction

A significant development in Accra's employment landscape since the 1990s has been the appearance of signboards advertising domestic employment agencies. With their legalization under the 2003 *Labour Act*, the number of signboards of employment agencies has increased exponentially.¹ However, this development has not translated into more robust regulation of the labour relations of domestic service, which remains one of the most casual segments of a largely informal labour force.

Although domestic work in Ghana is implicitly covered by most of the provisions of the country's labour laws, domestic workers generally do not enjoy the protection of labour legislation and labour institutions. Instead, they work and live under unacceptable conditions of service, and many also suffer physical and psychological abuse. In spite of their conditions, domestic workers make critical contributions to the reproductive activities of households and to the care economy in general. Many factors constitute a challenge to the regulation of domestic work. They include the global trend of liberalization of labour markets since the 1980s, the largely informal nature of the labour force in Ghana, the practice of recruiting poor family relations as unpaid domestic workers, an unsuitable legal and policy framework for domestic work, the largely informal methods of recruitment, and the lack of organization of domestic workers.

Individuals and informal employment agents have long been part of the process of procurement of domestic workers. In the last decade, formal employment agencies have also become part of the landscape. How effective these agents and agencies have been in improving the conditions of domestic work is the subject matter of this article. I argue that the entry of formal employment agencies into the recruitment of domestic workers has had a limited impact on the highly informalized and unregulated domestic labour regime. This is due largely to the fact that these agencies recruit only a small proportion of domestic workers and have limited their involvement to procuring domestic workers for potential employers, leaving the terms and conditions of work to be negotiated by the parties themselves. In the absence of specific regulations for domestic employment and employment agencies and agents, and without the self-organization of domestic workers,

1. *Labour Act*, 2003, Act 651 (Ghana), s. 7, National Labour Commission, <<http://www.nlcghana.org/nlc/privatecontent/document/LABOURACT2003.pdf>>.

employment agencies are simply institutionalizing the informality of domestic work.

The article explores these issues through an examination of the policy context and work conditions of domestic workers and domestic work. Also considered are the methods of procurement of domestic workers, with particular attention to the work of employment agencies. The article also discusses some initiatives to improve the regulation of domestic work and the organization of domestic workers.

Characteristics and Conditions of Domestic Work and Workers in Ghana

In Ghana, both rural and urban households across a wide socio-economic spectrum utilize the services of domestic workers, who are part of the informal economy, which now accounts for over 80 percent of the workforce. The prevalence of women in domestic work and the fact that their employers are largely women is also significant.² It has been argued that the policy neglect of domestic work and the generally negative attitudes towards domestic workers are partly due to these factors.³

Domestic workers are often from rural areas. While rural-urban migration of domestic workers is the norm, there is also rural-rural migration.⁴ Domestic workers are largely from poorer backgrounds, especially in relation to the families or households that employ them, and their wages often go towards supplementing their family incomes.⁵ Children, some as young as seven but, most often, from the age of ten, form a significant proportion of domestic workers in Ghana.⁶ Increasingly, teenage girls and young women who have dropped out of basic and secondary education are swelling the ranks of domestic workers. The changing demographics of domestic workers, compounded by the failure of the economy to create decent employment, is leading to the commercialization of domestic work.

Commercialization is changing the terms of employment of domestic work. Previously, domestic workers were not considered to be workers. Particularly in the case of children, they were considered to be in training and were expected to be afforded the opportunity to learn a trade during that time. At the end of their

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2. Nana Araba Apt, *A Study of Child Domestic Work and Fosterage in Northern and Upper East Region of Ghana* (Ghana: UN Children's Fund (UNICEF), 2005); 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) at 4; Dzodzi Tsikata, "Women and the Informal Economy: A Special Relationship?" (Paper presented to the ISSER/Merchant Bank Development Seminar Series, Accra, June 2007); Dzodzi Tsikata, *Domestic Work and Domestic Workers in Ghana: An Overview of the Legal Regime and Practice*, Conditions of Work and Employment Series no. 23 (Geneva: International Labour Organization (ILO), 2009).
 3. LAWA-Ghana, *supra* note 2 at 37.
 4. Apt, *supra* note 2 at 8-9.
 5. LAWA-Ghana, *supra* note 2 at 2-3; Apt, *supra* note 2 at 23.
 6. LAWA-Ghana, *supra* note 2 at 4; Apt, *supra* note 2 at 22.

service, they would receive some tools and equipment for the trade that they had learned—for example, a sewing machine. Parents were given a token fee on the understanding that the transaction would not constitute a sale of the child.⁷ Increasingly, there is the understanding that domestic work is paid employment. However, this has not translated into fundamentally different terms and conditions of work.

While domestic workers are part of the informal workforce, which constitutes over 80 percent of Ghana's ten million-strong workforce, they do not enjoy the protection of the country's labour laws. Guarantees such as fixed wages or salaries, rest periods, paid vacations, maternity leave with pay, and social security are denied most informal workers. In the case of domestic workers, the enforcement of labour laws has been made even more difficult by the large supply of potential domestic workers, the fact that domestic work is considered unskilled work despite the fact that many of the functions of domestic workers require great skill, and the near absence of self-organization of domestic workers.⁸

Domestic work relationships mostly lack a formal employment contract.⁹ Agreements made when domestic workers are recruited are often verbal and, therefore, susceptible to violation by employers, with no remedies for breaches of terms, particularly since such agreements are often reached between the parents of the domestic and the employer. In spite of the labour laws, the customary law of domestic employment does not require employers to pay domestic workers the minimum wage or even to pay them at all. While some domestic workers are paid in cash, others receive both cash and kind or are paid only in kind. Most domestic workers live in the home, and their accommodation and food are seen as part of their remuneration by employers.¹⁰ Other forms of in-kind payment include clothing, footwear, healthcare, and career training, mostly in sewing and the provision of a sewing machine.¹¹ Some are paid only at the end of their period of service, which could run into years, and often they have no indication of what payment they can expect. The value and adequacy of these provisions varies widely and depends on the income levels of their employers as well as the customary law of remuneration in their region of employment.

Domestic workers often work in unsafe conditions and are vulnerable to domestic injuries for which they sometimes do not receive treatment. The injuries, which include cuts, bruises, and burns, are sustained on various parts of the

7. Apt, *supra* note 2 at 26.

8. Tsikata, *Domestic Work and Domestic Workers*, *supra* note 2.

9. Apt, *supra* note 2 at 27.

10. Given the generally low income levels, poor housing conditions, and crowded living arrangements in many urban communities, the majority of domestic employees were not likely to have their own rooms or space.

11. In one study, it was found that 36 percent of domestic workers received their payment in kind only, while 22 percent were paid in both kind and cash and 28 percent were paid only cash. Fourteen percent received no payments at all. Apt, *supra* note 2 at 28.

body—face, eyes, thighs, and feet—and are routinely treated at home.¹² Domestic workers, particularly the children, suffer in some cases from malnourishment.¹³

The majority of domestic workers do not enjoy formal social security in that they are not registered under the formal social security scheme in Ghana, and their employers do not pay the required 12.5 percent of monthly salary towards their social security.¹⁴ In the course of their duties, some domestic workers suffer sexual harassment and abuse, a problem complicated by the fact that domestic workers often live with their employers. They often suffer in silence to avoid the risk of being accused of trying to break up the employer's marriage. Domestic workers also suffer from domestic violence routinely as a form of punishment for a wide range of infringements and accidents occurring in the course of their daily duties. These offences include being slow in the discharge of their duties, breaking crockery, leaving the house without the permission of their employers, rudeness, and refusing sexual advances. Such punishment includes angry shouting, insults, threats, and slaps, often administered in the presence of others to humiliate the worker.¹⁵ Child domestic workers are particularly vulnerable to this form of abuse. There are also reported instances of psychological abuse, with domestics made to feel, or explicitly told, that they are inferior to others.¹⁶ Many domestic workers are separated from their families, and some are not allowed to see their families or travel back home.¹⁷

Given their conditions, it is not surprising that domestic work, in spite of its significance for the reproduction of the workforce, is undervalued, treated as menial, and relegated to subordinate others. Domestic workers are therefore subjected to the most severe forms of livelihood insecurities and poor labour conditions—conditions that are in breach of the ILO standards of decent work.¹⁸

The Policy and Legal Context of Domestic Work

The conditions discussed earlier have been shaped and reinforced by the policy context of domestic work. The overall policy approach to work and

12. LAWA-Ghana, *supra* note 2 at 6; Apt, *supra* 2 at 34.

13. LAWA-Ghana, *supra* note 2 at 6.

14. *Ibid.* at 9. This situation is set to improve with the establishment of an informal social security system by the Social Security and National Insurance Trust, the state-owned social security system. The scheme was piloted from June 2005 and has now been officially established since November 2008. However, without explicit efforts to include domestic workers, their situation is not likely to improve.

15. LAWA-Ghana, *supra* note 2 at 7; Apt, *supra* note 2 at 35.

16. LAWA-Ghana, *supra* note 2 at 7-8.

17. Apt, *supra* note 2 at 37.

18. Adelle Blackett and Dzodzi Tsikata, "Vulnerable Workers," in Frédéric Mégret et al., *Dignity: A Special Focus on Vulnerable Groups*, Swiss Initiative to Commemorate the Sixtieth Anniversary of the UDHR, June 2009, at 59, <http://www.udhr60.ch/report/HumanDignity_Megret0609.pdf>.

employment in Ghana and much of sub-Saharan Africa is rooted in the economic liberalization paradigm, a key feature of which is the downgrading of employment from a macro-economic concern to a sectoral issue. This shift, combined with the belief that low labour costs would attract foreign investment, has resulted in policies based on wage restraint.¹⁹ Economic liberalization policies have transformed labour regimes the world over, leading to the informalization of work and the increased insecurity and vulnerability of workers. In developing countries, the long-standing state ambivalence about the informal economy has disabled many states from taking comprehensive measures to address its problematic labour relations.²⁰

The new *Labour Act* has been criticized by the Trades Union Congress (TUC) of Ghana on the basis that it has curtailed the right of workers to unionize and to take industrial action by imposing cumbersome procedures for tackling labour disputes.²¹ The TUC has recently called for the amendment of sections of the act that deal with unionization, the certification of trade unions, and the termination of employment to remove ambiguities not in the interest of workers.²² The TUC itself is not in a strong position to press these claims, having been much weakened by large-scale retrenchments of public sector workers and the demise of the tripartite system of policy negotiations involving government, employers, and labour. The last vestiges of the pre-liberalization labour regime are the annual announcement of the minimum wage and periodic comments by the TUC on economic policy, the budget, and particular measures such as the sale of state enterprises and utilities.²³

Given that public sector employees make up less than 10 percent of the labour force, much of the concern about employment conditions concerns the private formal and informal economies where domestic work is situated. More recent efforts to address the problems of the informal economy have taken an enterprise, rather than a labour, approach. Policy discussions have focused on enterprise formalization with a view to bringing more economic actors into the tax net and regulating their activities. Labour relations and conditions of workers in the informal economy are not seen as a priority, partly because of the continuing belief that developing countries are competitive because of their lower labour costs.²⁴

19. Thandika Mkandawire and Charles C. Soludo, *Our Continent, Our Future: African Perspectives on Structural Adjustment* (Ottawa, Dakar, Trenton: International Development Research Centre, CODESRIA, and Africa World Press, 1998).

20. Blackett and Tsikata, *supra* note 18.

21. The Trades Union Congress (TUC), which consists of seventeen national unions, is the main trade union centre for formal workers in Ghana. Under the repealed *Labour Decree* (NLCD 157) of 1966, Ghana, it was easier to embark on industrial action as there were no detailed procedures to be followed before a strike could be declared.

22. "Organised Labour Wants Labour Act 2003 Amended," *[Ghanaian] Chronicle* (12 September 2008).

23. Tsikata, *Domestic Work and Domestic Workers*, *supra* note 2 at 11.

24. *Ibid.*

The weaknesses of the policy framework are reflected in the *Labour Act* and its legislative instruments, which along with the 1992 Constitution, the *Children's Act*, and the *Domestic Violence Act* constitute the legal framework for domestic work in Ghana.²⁵ Ghana had ratified seven of the eight ILO core conventions by 1999. With regard to the *Labour Act*, section 1 states that it applies to all workers and employers except those in the armed services—the only mention of domestic workers in the act (beside the definition of the term) is in section 44, where it is stated that “this sub-part and sections 33 and 34 do not apply to task workers or domestic workers in private homes.”²⁶ The sub-part in question is III, which covers rest periods, specifically daily and weekly rest periods, while sections 33 and 34 peg maximum hours of work at forty hours per week.²⁷ This statement implies that all other sections of the *Labour Act* are applicable to domestic workers. The reality however is that the *Labour Act* generally is not applied to many informal workers, including domestic workers. In relation to domestic work, it has been observed that labour regulations drafted with the industrial workplace in mind are difficult to apply to the home, the workplace of domestic work. Thus, in the absence of specific legislation for domestic work, the inclusion of domestic workers in the *Labour Act* is more aspirational than real. It has been suggested that domestic work is actually regulated by the law of the “home workplace.”²⁸

The lack of proper documentation of domestic work and workers is another difficulty in the regulation of domestic work. An element of this shortcoming can be found in the ambiguities created by the definitions of domestic work in official documents. The *Labour Act* 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.”²⁹ This definition excludes fostered children and persons with kinship relations with their employers, two important categories of domestic workers. In the *2000 Population Census Enumerator's Manual*, domestic workers are defined as “persons who are engaged to render household service[s] with or without pay.”³⁰ This more open definition captures more of the situations of domestic work. However, the definition of the unpaid family worker in the same manual as “a person who helps in running an economic enterprise operated by a member of his or her family without payment of wages or salary” does not take into account the fact that domestic workers are often involved in the running of informal economic enterprises.³¹ Thus, a member of the family who does both domestic work and

25. *Constitution of the Republic of Ghana*, 1992 [Constitution]; *Children's Act*, 1998, Act 560, Ghana; *Domestic Violence Act*, 2007, Act 732, Ghana.

26. *Labour Act*, *supra* note 1 at ss. 1 and 44.

27. *Ibid.* at ss. 33–4.

28. Blackett and Tsikata, *supra* note 18 at 64.

29. *Labour Act*, *supra* note 1 at s. 175.

30. Ghana Statistical Service, *2000 Population and Housing Census Enumerator's Manual* (Accra: Ghana Statistical Service, 1999) at 56.

31. *Ibid.*

helps in the running of a family business would be classified as an “unpaid family worker,” which does not take into account their involvement in domestic work. Furthermore, the instruction to enumerators to treat all persons aged seven years and older who are helping family members in their economic activities but are also full-time students in educational institutions as students, hides another category of domestic workers who combine work with their education.³² Leadership and Advocacy for Women in Africa-Ghana’s (LAWA-Ghana) definition of domestic workers as individuals who work in the houses of their employers and receive payment either in cash, in kind, or both is useful in extending coverage to many more domestic workers.³³ However, the distinction that it makes between domestic workers and domestic assistants on the grounds of age can be modified by using the term child domestic worker for all domestic workers under the age of fifteen (the age of majority for the purposes of work in the *Children’s Act*).³⁴

Overall, the last national population and housing census of 2000 does not contain enough information to ascertain the percentage of Ghanaians who are domestic workers. Out of eighty-five clusters of occupations identified in the census, only three—(1) maid, related housekeeping service workers; (2) building caretakers, char-workers, cleaners; and (3) launderers, dry cleaners, and pressers—were directly connected with domestic work, and these constituted a total of 103,905 out of a 7.5 million strong working population (representing only 1.4 percent of the labour force—0.79 percent male and 2.2 percent female). It is conceivable that many more domestic workers are hidden within categories such as farmers (43.8 percent) and hawkers, street and pavement vendors (3 percent).³⁵

The Ghana 2003 *Core Welfare Indicators Questionnaire Survey*, which explicitly identifies domestic workers, found that in the fifteen years and older age group, only 0.9 percent were domestic workers.³⁶ Unpaid family workers, however, were another 7.4 percent, while students were 4.7 percent. These are categories of workers who are often engaged in unpaid domestic work at different levels of intensity and yet would often not be classified as domestic workers. A national survey on child labour found that only 0.3 percent of working children were domestic workers.³⁷ More substantial percentages were recorded for unpaid family workers (29.8 percent) and own account workers (54.7 percent). Given the persistent idiom of kinship surrounding domestic work, a proportion of unpaid family workers and own account workers would certainly have been domestic workers

32. *Ibid.* at 49.

33. LAWA-Ghana, *supra* note 2 at 2.

34. *Children’s Act*, *supra* note 25 at s. 89.

35. Ghana Statistical Service, *supra* note 30 at 80-83; *Population and Housing Census of Ghana, 2000* (Accra: Ghana Statistical Service, 2005); Tsikata, *Domestic Work and Domestic Workers*, *supra* note 2 at 24.

36. Ghana Statistical Service, *Ghana Child Labour Survey* (Accra: Ghana Statistical Service, 2003) at 86.

37. *Ibid.* at 23.

who do not receive wages because of their kinship with their employers. The lack of accurate statistics for domestic workers stems from a long tradition of neglect of such workers in censuses and labour surveys. Unlike in Zambia and Zimbabwe where statistics collected in the colonial period demonstrate the high prevalence of domestic work, much of the labour statistics in Ghana since the 1960s has been silent on domestic work.³⁸ This policy context also frames the procurement of domestic workers and the work of employment agencies, which is the subject of the next section of this article.

The Procurement and Regulation of Domestic Work

There are several methods of recruiting domestic workers in Ghana. These include direct hiring, recruitment through friends and family, the use of informal agents, formal private agencies, and public sector employment offices. A study found that 20 percent of respondents were recruited through their relatives, 40 percent through friends and neighbours of the employer, 16 percent through the employers' relatives, while 18 percent of domestics had gone to their employers directly.³⁹ A recent study of 319 domestic workers found that 266 (83.4 percent) found their current jobs through family and friends, while fifty (15.7 percent) used a formal agency.⁴⁰ These findings suggest that traditional informal arrangements for procuring domestic workers have endured, with the use of formal agencies only now slowly catching on. However, some changes have been introduced over the years, such as the entry of paid intermediaries into the recruitment process.⁴¹

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 domestics and their potential employers and sometimes assist in the negotiation of terms. For example, a family member living in an urban area could be tasked with finding a position for young persons living in their hometowns. Such persons could also initiate the process by alerting their rural relations about potential work in other communities and assist in the delivery of the domestic worker to an employer. If things work out, the mediator might receive other requests by way of word of mouth, and, thus, they become identified as being able to procure domestic workers. On the supply side, they come to be

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38. Karen Tranberg Hansen, "Gender and Housing: The Case of Domestic Service in Lusaka, Zambia" (1992) 62 *Africa: Journal of the International African Institute* 248; John Pape, "Still Serving the Tea: Domestic Workers in Zimbabwe 1980-90" (1993) 19 *Journal of Southern African Studies* 387.
 39. Apt, *supra* note 2 at 24-5.
 40. 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*, Second-Year Technical Report on August 2009 to July 2010 submitted to the International Development Research Centre, Accra, at 9 [unpublished].
 41. Apt, *supra* note 2 at 2-3.

identified as persons who can secure domestic positions for young persons in need of such positions. 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 they might get their expenses paid by both sides. Others might establish themselves as informal agents who are paid for their services. Agents usually have communities from which they recruit domestic workers, selected on the basis of affinity, proximity, ease of entry, association with a large supply of potential domestic workers, and other such considerations.

Whether the work of informal agents has introduced more formality into the recruitment of domestic workers and improvements in their terms and conditions is open to question. This is because some elements of their transactions continue to be quite informal. For example, wages are often negotiated with the parents and other family members of the domestic worker, particularly in situations where the worker is quite young. As well, the terms and conditions often agreed do not approximate the conditions of formal workers. Anecdotal accounts of the activities of informal agents suggest that the exploitation of domestic workers often starts with them.

Formal agents, though operating on a different legal basis, do not appear to be very different from informal agents. Since 2003, registered and unregistered employment agencies have increasingly become part of the landscape for procuring domestic workers. Employment agencies were illegal in Ghana under the 1969 *Labour Regulations*.⁴² This state of affairs was buttressed by Ghana's ratification of the second part of ILO *Fee-Charging Employment Agencies Convention (Revised)*, 1949 (No. 96) in 1973.⁴³ This convention required the elimination of profit-making employment agencies where public employment agencies were available. The new *Labour Act* has provisions for the registration of employment agencies.⁴⁴ In 2008, thirty-five agencies had applied to the Labour Department, of which nineteen had been granted a license to operate.⁴⁵ The Labour Department's responsibilities are to investigate the background of the applicants, inspect their facilities and establishment, grant them licences on behalf of the minister, and monitor their operations. The agencies are expected to provide quarterly reports to the department, but they were still not doing this as of 2009.⁴⁶ The

42. *Labour Regulations*, 1969, LI 632, Ghana, s. 61.

43. *ILO Convention on Fee-Charging Employment Agencies (Revised)*, (No. 96), 1949 [*ILO Convention No. 96*].

44. *Labour Act*, *supra* note 1 at s. 7. It is not clear whether Ghana has withdrawn ratification of Part II and ratified Part III of *ILO Convention No. 96*, which allows private agencies. A search shows that Ghana accepted the provisions of Part II in 1959. There is no entry for Part III with respect to Ghana. ILO, *International Labour Standards Department List generated by APPLIS*, <<http://webfusion.ilo.org/public/db/standards/normes/appl/appl-byCtry.cfm?lang=en&CTYCHOICE=1960>>.

45. Only two of the nineteen, L'ainé Services and Tewnbo Company Limited, deal with domestic workers. Only Tewnbo Company Limited deals exclusively with domestic workers.

46. Interview of Solomon Dartey, Labour Department, Accra (7 July 2008).

following cases, one an account of the work of a formal private employment agency and the other of an informal employment agent, illustrate some of the issues raised by the entry of informal agents and employment agencies in the recruitment of domestic workers.

Case 1: The Good Shepherd Agency

The Good Shepherd Agency (not its real name) was started three years ago by Madam Ama, the wife of a pastor, to address primarily the youth unemployment problem in their church.⁴⁷ The agency is located in the back of their house and consists of three rooms. One is used as the office and the other two serve as rooms for male and female recruits just before their placement. The agency is run by five people: Madam Ama, who is the head of the agency; an employee who visits the homes of potential employees to verify the particulars that they provide on the forms they fill out; a client officer who meets potential employers; a registration officer; and a friend of the family who has just graduated from university, who helps out in her free time.

The agency's first recruits were six church members—four men and two women. Now it recruits potential domestics, mostly female, from all over Accra. Madam Ama also travels to northern Ghana to recruit young women from this region. The agency registers persons irrespective of sex, religion, and educational background. Potential employees who come to register undertake to work for at least one year, after which they are registered under the National Health Insurance Scheme. After three years of work, they are sponsored by the agency to undertake one of eight short courses in housekeeping. As of 2007, the company had 400 registered recruits, and a third of them were employed. When placed, half of the worker's first salary is paid to the agency. Additionally, they are levied a monthly contribution of five Ghana cedis, a one-off registration fee of three Ghana cedis, and the costs of their medical examinations and other expenses incurred in their recruitment and placement.⁴⁸ In addition, when they destroy any valuables of their employers due to carelessness, the cost is deducted from their salary.

Potential employers pay twenty Ghana cedis as a registration fee. This payment entitles them to placements whenever they need services and to a replacement if they are not satisfied. The employees are graded from A to C and are paid according to this gradation. Grade A consists of experienced domestic workers who do general housekeeping chores, Grade B employees perform a more limited list of functions, and Grade C are young and inexperienced workers who have an even more limited job description. In addition to general domestic workers, the agency also registers shop attendants, cleaners, drivers, cooks, waiters, waitresses, gardeners, and

47. This case is based on an interview with the owner of the agency at her home in Accra on 1 June 2007.

48. 1.4 Ghana cedis are equivalent to US \$1 at current exchange rates.

laundry workers. The agency and the domestic workers that it places face a number of challenges. The main one is the reluctance of clients to pay the domestic workers in their employ consistently and at predictable intervals. The payment scheme has therefore been altered, and since August 2006 employees have been paid through the agency. As Madam Ama notes, “many employers begin to pay salaries partially and in arrears. After several months, the arrears accumulate. Then the employers suddenly discover that they have lost a valuable piece of jewellery. They insist that the domestic workers are responsible and terminate their appointment without paying the salary arrears. I have insisted that they pay me so they do not lose their valuables.” To improve the quality of their services to employers, the employers are asked to state their preferences, and these are matched to potential domestic workers. As well, potential employers are required to specify the precise duties the domestic is expected to perform.

Case 2: Victoria, an Informal Employment Agent

Victoria is fifty-two years old and was born in a suburb of Accra.⁴⁹ She was brought up by her mother’s older sister, a trader, who sold different things at different times—cloth, provisions, bread, and kenkey—and also ran a chop bar.⁵⁰ Victoria was one of a number of nieces who stayed with her aunt. Victoria never went to school. She worked for her aunt until she became an independent trader herself. She married and moved to Akosombo and Kpong with her husband who was a worker at the Akosombo Textiles Limited. At Akosombo, she continued with her trading activities. When her husband died, Victoria, who was in her thirties at the time, returned to Accra. She lived in her mother’s house and found work as a domestic employee to support herself and her children. She did this for twelve years in different positions for periods between one month and two-and-a-half years in Accra. During this period, she registered with a domestic employment agency to facilitate her access to work. She also began to help people recruit domestic workers informally. They would come to her employer’s house and meet her and then ask if she could find someone to work for them. She did not charge for this service. Since these requests were from friends of her employer, she was permitted to travel to particular locations to fetch the new employee. She would then go to various villages and small towns in the Volta region where she had family and friends.

After a while, she began to assist the domestic employment agent that she was registered with to look for people to sign up as domestic workers. The owner of this agency, which was being operated from the home of the agent, would send her to various places to look for people to sign up. She would take the agency’s business

49. Interview of Victoria (not her real name) (30 November 2009) in Accra.

50. Kenkey is a Ghanaian staple food made through a multi-stage cooking process from fermented maize dough.

card, which had a phone number, address, and directions, to the agent's house. She worked for this agent for two years. She then asked the agent for a position, and she was placed with someone for whom she worked for one-and-a-half years and then left.

She then decided to set up as an independent employment agent—a job that she had been doing for a year at the time of this interview. Several of the people who were working for this agent as recruiters had also established their own agencies. According to Victoria, a successful employment agent has to have facilities—somewhere to interview prospective employees and house them while they wait to be placed. She also noted the importance of training potential domestic workers before placing them since many were used to living in single rooms whereas they were likely to work in houses that had many rooms, facilities, and equipment that would be unfamiliar to them.

Victoria felt that she had a gift for recruiting domestic workers. She was doing this informally long before she became a domestic worker herself. While she was with her husband, her abilities became known through word of mouth, and, if someone had a child, they would tell her and she would pass on the information to people who were looking to employ a domestic worker. She would then discuss some terms with the parents of the child in question, and then she would take the child to whoever needed their services. In those days, children were plentiful, and there was no need to pay them.

Victoria lives and operates in a low income neighbourhood in Accra. She considers her location to be disadvantageous because prospective employers might not find it easily. She addresses this issue by going to them directly or phoning them. In any case, the neighbourhood is useful for recruiting domestic workers because it is densely populated with very few options for other work. Many of her recruits are from the neighbourhood. Parents would ask her to find work for their children when they had completed junior secondary school. They would often say the child should work for a year to contribute to the cost of further education. On her own initiative, she would also approach the young people in her neighbourhood and try to sign them up. There were also older women looking for work—for example, a woman who had lost her trading capital. Formerly, she had also recruited from some villages but was no longer travelling for financial reasons. However, she was still receiving calls from potential recruits in the villages.

Although Victoria is illiterate, she keeps a notebook in which her children write the names of clients and their phone numbers. She also has agreement forms that have to be filled by the employer and the domestic worker if both parties are in agreement. Victoria charges domestic workers ten Ghana cedis when she finds them work and charges their employer fifty Ghana cedis. When potential domestic workers register with her, she provides them with toiletries. They pay her only when they receive their first wages. She notes that other agents charge five Ghana cedis to register people on their books even before placing them. She leaves salary negotiations with the prospective employer and the domestic worker, only getting

them to sign the forms once they have agreed to the terms. Sometimes she mediates between the parties when they are not present in the same space. She passes on their positions to each of them. On one occasion, she has advised the prospective domestic worker to take what was being offered.

She notes that employers can start with a salary of, say, fifty Ghana cedis (US \$35) and increase it to sixty and seventy Ghana cedis a month. Her placements often earn between fifty and one hundred Ghana cedis (US \$70), which young women generally consider inadequate. For this reason, they increasingly have a preference for formal agencies who can secure them between a hundred and a hundred and twenty Ghana cedis for a general domestic worker and even more for cooks.

Victoria still has relations with her old agent and goes periodically to help her with her cooking and flower arrangements. This year alone, she has placed over thirty girls and young women and six young men as domestic workers and one as a driver. All of the placements are in Accra. Only about twenty of the placements had signed agreement forms with their employers. The recruits do not come from any particular ethnic groups although they are dominated by people from the north of Ghana, Ewes, and Akans. Most of them have been to school, the majority are general domestics, although there are a few that are cooks and drivers. She never visits the domestics unless invited by the employer to solve a problem. The employers of domestics are involved in a wide range of economic activities—from trading to formal employment. Victoria has concerns about her work because she has not registered the business and is not licensed as an agent. She would like to put up a large signboard, but she is fearful of inviting trouble with the Accra Metropolitan Assembly. She has a small signboard that neighbours can see. Victoria considers that her role as an agent is useful for keeping young women and men from unemployment, crime, and anti-social behaviour.

Discussion of the Two Cases

These two cases provide material for a discussion of employment agencies and informal agents that also engages with some of the debates in the literature. The entry of licensed employment agencies has introduced a more formal regime between employers and domestic workers. While, in much of the literature, this shift is expected to improve the conditions of domestic workers, a study of women in an employment agency in California has argued that this modernist notion that formal and more structured relations can eliminate some of the exploitative elements of domestic work is flawed. While private employment arrangements offer more options and allow domestic workers more space for negotiating their terms and conditions and exerting some control over how they work, employment agencies often seek to standardize domestic work and its terms. Indeed, the study demonstrates how not only the agencies but also the workers seek to establish personal relations with employers as part of a strategy to improve their terms and

conditions of work. The study concludes that, ideally, workers should combine work with employment agencies and direct arrangements with private employers in order to maximize their earnings.⁵¹ The study and its conclusions provide a useful point of departure when examined in light of the specificities of domestic work and the operations of employment agencies in Ghana.

In Ghana, formal employment agencies require potential employers of domestic workers to sign and abide by a formal contract, which includes the payment of cash wages. They also assist in clarifying the duties of the worker and operate a wage scale in keeping with the range of skills and duties required. This differentiation is helpful in promoting the recognition of the skills and experience of domestic workers. However, it ignores the range of skills that are applied by general domestic workers who are considered unskilled. Another way in which the arrangements of formal employment agencies in Ghana differ from the more informal arrangements is in the characteristics of the people they recruit. While children are commonly the targets of individual agents recruiting on behalf of employers, licensed employment agencies recruit only those who are older than fifteen years of age. Other advantages mentioned are their contribution to reducing unemployment and generating revenue for government through taxation.⁵²

The training of domestic workers and the health checks that they have to undergo, though not consistently done, are critical changes, as is the deliberate effort to match workers with employers according to their needs and preferences. Employers have the liberty to express a preference for a domestic worker of a particular gender and ethnicity, and this preference is accommodated by the agencies. They can also return a domestic worker to the agency and demand a replacement if they are not satisfied and do not have to justify their actions. This particular feature of the arrangements of agencies such as the Good Shepherd Agency draws attention to the personal service element of domestic work that can contradict the equality and non-discrimination principles of recruitment.

The majority of employment agencies, particularly those recruiting domestic workers, are not licensed under the *Labour Act*, even though they are registered, tax-paying limited-liability companies.⁵³ Thus, they operate in the space between individual intermediaries and the licensed agencies. Several are involved in questionable practices. These include failing to pay workers, short-changing them with unnecessary deductions, taking no responsibility for their work conditions,

51. Jennifer Bickham Mendez, "Of Mops and Maids: Contradictions and Continuities in Bureaucratized Domestic Work" (1998) 45 *Social Problems* 114; see also Abigail B. Bakan and Daiva K. Stasiulis, "Making the Match: Domestic Placement Agencies and the Racialization of Women's Household Work" (1995) 20 *Signs* 303.

52. Interview of Dartey, *supra* note 46.

53. A mapping exercise undertaken by the Centre for Gender Studies and Advocacy at the University of Ghana in Accra, Kumasi, and Tamale, three of Ghana's largest cities, identified thirteen agencies recruiting only domestic workers, and eight others who recruited domestic workers as part of their portfolio were identified. Dzodzi Tsikata et al., *supra* note 40 at 5.

and privileging the needs of the employers.⁵⁴ The Good Shepherd Agency was not applying the minimum wage in its wage negotiations, preferring to peg wages at what the employer was willing to pay within reason. In spite of this flexible approach, wages were often within a certain range. This suggests that it should be possible to insist on wages that are above the statutory minimum wage.

Employment agencies in Ghana are hampered by the absence of labour regulations tailored to the particular conditions of domestic work, the lack of regulations governing their relationships with employers and employees, and the absence of enforcement mechanisms for the contracts they broker. This situation leads to variations and inconsistencies in the employment practices. While some agencies deduct monthly fees from salaries paid to them, others take a one-off payment and leave the domestic worker and the end user to deal directly with each other on questions of pay. In the case of the Good Shepherd Agency, as indicated earlier, the agency had to change its wage administration policy when it discovered that many employers were not paying wages regularly. Under its new system, wages were paid to the agency and it then paid the workers. These variations in the wages regime and related practices raise the question about who the employer of the worker really is—the agency or the end user?⁵⁵

Informal agents such as Victoria clearly provide a link between traditional practices of recruitment and regulation and the more formal regime of employment agencies. They are also less likely to be seen as employers of domestic workers. Victoria clearly operates an arm's length approach once a domestic worker is introduced to a potential employer. She helps with negotiating salaries and terms only when asked, although she does advise the parties. As well, she does not visit her placements. The agencies do not visit either. Unlike the agencies, Victoria cannot enforce her signed agreement requirement. It is left to the employer to decide if they want to sign it. In spite of these limitations, she is often called upon to settle disagreements, although this is not formally required by the terms of her relationship with the parties. She probably obliges the parties to keep her connections with them as such relationships could generate future work and new clients, who often approach her on the recommendation of satisfied clients. Victoria's non-registered status is a source of insecurity that disables her from being more firm with employers or helping to negotiate higher wages for the domestic workers that she recruits.

In her particular case, Victoria's relationship with a formal agency provides a window into the links between formal and informal agents and its implications for the regulation of domestic work. Many formal agents began informally and

54. Interview of Dartey, *supra* note 46.

55. And yet, the *Labour Act*, *supra* note 1, makes a clear distinction between employment agencies and employers. Section 3, which sets out the functions of employment centres, states that each centre will assist persons "to find suitable employment and assist employers to find suitable workers from among such persons."

also continue to use informal agents for recruiting their pool of domestic workers. This informality at the base of the recruitment of domestic workers has implications for efforts to institute formal processes and procedures. If parents hand over their children to an informal agent, does the fact that she is eventually registered by a formal agent change the informality underpinning their relationships? Formality and informality are more on a continuum than at opposite ends of the scale. Some have suggested that employment agencies are inherently aligned to employers because employers have more money and domestic workers are dispensable in so far as there is a regular supply pipeline.⁵⁶

To return to Jennifer Mendez's argument that private arrangements are superior to the use of employment agencies in important ways, it is not borne out in the Ghana case in spite of the many criticisms of employment agencies. This is largely due to some of the key features of domestic work in Ghana. For example, the family idiom in domestic work is much stronger than in industrialized countries because domestic workers are often extended family members of their employers. This factor has long undermined domestic service as work that should be paid on agreed terms and conditions. Second, domestic work has been shaped in a context in which employment is largely informal.⁵⁷ Thus, while domestic work is increasingly commoditized and transformed from reproductive to productive labour, many employers themselves are people on very low wages, who can barely afford to pay for domestic services.⁵⁸ Third, domestic employment agencies do not replace end users as employers in their practice since their relationship with domestic workers and users is much more limited than what is found in the Mendez's study.

The role of employment agencies in Ghana appears to end once the worker is placed in a position, and both the worker and employer pay the agreed fees to the agency for bringing them together. In addition, since domestic workers mostly live in, they continue to be largely supervised by their end users. Thus, employment agencies have not transformed the work process of domestic work, which continues to be not much different from what pertains in direct private employment relations. The changes introduced by agencies are reflected more in the wages and hours of work. Current limitations of employment agencies notwithstanding, their operations have introduced a significant variation in the administration of domestic work in Ghana for the minority who benefit from their services. By registering and placing domestic workers, giving them limited training, negotiating placements backed by formal, though voluntary, agreements between employers and domestic workers, agencies are establishing new modalities and contributing to a new customary law of domestic work that institutionalizes informality. Under this new order, domestic work is seen as work, and some issues that were left

56. Interview of Yaw Baah, Accra (23 July 2008).

57. Tsikata, *Domestic Work and Domestic Workers*, *supra* note 2 at 24.

58. Mendez, *supra* note 51 at 119.

to the discretion of the employer in the past such as pay, days off, and feeding and sleeping arrangements are now getting raised for discussion. Regulating and standardizing the practices of agencies and clarifying the nature of their relationships with the workers they place would promote improvements in the conditions of domestic workers, even under conditions of informality.

Beyond Employment Agencies: Towards Improvements in the Conditions of Domestic Workers

Beyond the regulation of employment agencies and agents, the position of domestic workers would be strengthened by their self-organization, advocacy on their behalf by civil society actors, and laws to regulate domestic work. Recent initiatives to improve the conditions of domestic workers have either not been successful or are in embryonic stages. However, since they offer lessons for the future, two of these initiatives will be examined briefly in this section. The first is the initiative by the Industrial and Commercial Workers Union's (ICU), which is one of the seventeen national unions of the TUC of Ghana, the first to organize domestic workers.⁵⁹ In the early 1990s following the widespread retrenchments of formal workers, as part of its efforts to augment its membership, the ICU extended its coverage to cooks and stewards and then to gardeners, drivers, private security workers, and babysitters/nannies. The union's main goal was to extend the working conditions of the formal economy to workers in the informal economy, particularly those conditions guaranteed in the labour laws. It devised an organizational structure to replicate its pre-existing structures for the informal unions. Between 1999 and 2000, several regional associations were established, and a National Domestic Workers Union (DOWU) was inaugurated at the end of 2000 at a quadrennial delegate's conference. Between the late 1990s and 2002 when the association was at its most successful, there were branches in nine out of the ten regions in Ghana, and it had a membership of about 1,200 who paid dues. By 2003, however, the union had almost no members left. Although its national president continues to be a member of the National Executive Committee of the ICU, the union is no longer a credible organization of domestic workers.

Several factors have been identified as contributing to its decline as a union. The immediate trigger was the ICU's withdrawal from the day-to-day organization of the local branches. Although it was expected that the hands-on approach to organizing would be temporary, the union was not ready for the withdrawal.⁶⁰ Evidently, the

59. This account of the Industrial and Commercial Workers Union's (ICU) experience is based on interviews with an official who had formerly been in charge of organizing domestic workers in the ICU and documents on the files of the informal sector unit of the union. All of the documents referred to are from the ICU's "Informal Sector Unit File on Domestic Workers" (1999-2005). The ICU had hired organizers for the sole purpose of organizing domestic workers.

60. Interview of Simon Baaba Alootey, Accra (11 August 2008).

DOWU did not progress to the levels of autonomy expected of the associations of informal economy operators affiliated with the ICU and continued to have expectations of the ICU that the latter could not fulfil due to its resource constraints. For example, the ICU has identified the financial cost of organizing domestic workers and the resistance of both employers and the domestic workers themselves as difficulties.⁶¹

Another factor was the disconnect between the membership and leadership of the union. While the organization was established to target domestic workers in private homes, the leadership of the union and its membership in certain regions was dominated by institutional domestic workers.⁶² The high turnover among domestic workers is a challenge to organizing them. According to one ICU official, many workers only stay for long enough to save some money to pay for learning a trade. Even those who have been domestic workers for several years consider it a temporary occupation.

A second initiative is the LAWA-Ghana project to promote recognition and respect for the rights of domestic workers.⁶³ Project objectives include, among other things, the identification of problems with the employment of domestic workers and the advocacy of formalizing the employment relationships between domestic workers and their employers.⁶⁴ In 2003, based on a study it had conducted, LAWA-Ghana drafted a regulation entitled *Labour (Domestic Workers) Regulations*, which it presented to the Ministry of Manpower, Youth and Employment, with the view to getting it passed by Parliament into law. The draft regulations are divided into seven parts, and they cover the main areas of the *Labour Act*. However, the provisions apply to only those domestic workers who are eighteen years of age or older. For those younger than eighteen, the provisions of the *Children's Act* are to apply.⁶⁵ The draft regulations include provisions on sexual harassment and domestic violence (section 15) and a separate section on living standards, which is directed at live-in domestic workers. The draft regulations also require the registration of domestic workers in the District

61. *Ibid.*

62. Accra Domestic Workers Union Constitution, undated [on file with author].

63. The Leadership and Advocacy for Women in Africa (LAWA-Ghana) program is a non-profit organization incorporated under Ghanaian law in May 1998. It was formed by a group of eight women lawyers who participated in the USAID exchange program. The program was started in 1994 and has trained female lawyers at the Georgetown University Law Centre.

64. LAWA-Ghana's work can be seen as continuing from where the ICU left off with regard to the analysis of labour laws to ascertain their relevance to domestic workers and the design of contracts of employment. The ICU has participated in some of the stakeholder meetings called by LAWA-Ghana to deliberate on its work and has contributed information to the LAWA-Ghana effort.

65. This would imply that the prohibitions of child labour would be in force when the worker is younger than eighteen years. While this is in keeping with the *Children's Act*, *supra* note 25 at s. 1, which defines a child as a person younger than eighteen years, it creates a gap in the protection of domestic workers because the minimum age for the employment of a child under the *Children's Act*, s. 89, is fifteen.

Labour Office and allow labour officers to conduct the regular inspection of homes where there are domestic workers. It favours the enforcement of contracts but does not allow contracts that give domestic workers less than they are guaranteed under the regulations. The regulations have been incorporated into a simplified manual for training domestic workers, employment agencies, and users of domestic workers about their rights and responsibilities. Since 2004, LAWA-Ghana has undertaken programs to sensitize policy makers, advocates, and the general public on building consensus on the draft labour regulations. The most recent of these events was in March 2010. LAWA-Ghana has also worked with employment agencies to develop formal contracts for use in the placement of domestic workers. These efforts—the manual, prototype contracts, check lists, and the draft regulations—are very timely and useful. However, the fact that they emanate from a civil society organization raises questions about how they will progress through the policy-making and legislative processes in Ghana and their implementation if they should become law.

Several trade union officials and policy makers have agreed on the need for dedicated regulations for domestic workers, either in the form of a legislative instrument under the *Labour Act* or as a separate act altogether on the basis that domestic workers will enjoy social security, social protection, and freedom from violence only if laws specifically designed to address their situation are passed. The advantages of having an instrument related to the *Labour Act* would be its reinforcement by the act as well as the implication that domestic labour is an integral part of the employment regime in Ghana. The lessons from these efforts point to the need to improve the documentation of domestic workers so that the gap between official statistics and public perception about the high prevalence of domestic work is bridged. Second, the tailor-made regulations for domestic work need to be taken up by official legislative processes.

Ultimately, securing decent work conditions for domestic workers must involve the comprehensive redress of conditions in the informal economy in general. Policy reforms to strengthen the creation of decent work by the economy—an employment policy that tackles the conditions of employees and regulates both formal and informal employment agencies and social security reforms—are urgently needed. Thus far, beyond procurement and the initial negotiation of wages, the impact of employment agencies on domestic work has been minimal. Only in a differently ordered policy climate can they be reoriented to reduce the informality of domestic work instead of institutionalizing it. One of the ways of providing the climate for such fundamental changes would be the self-organization of domestic workers. The failed efforts of trade unions point to the need for such efforts to be led by those serving, and those who have served, as domestic workers. Successful efforts elsewhere to organize domestic workers have enabled them to fight for the recognition of the dignity and value of their work and of themselves as workers. It has also involved securing for workers some of the essential conditions of formal workers and the use of innovative strategies that are more suited to the organization of

workers that are dispersed within homes. Strategies include the use of mass media outlets, religious establishments, and neighbourhoods as rallying points, the establishment of agencies, and the registration of domestic workers. These means are reinforced by the forging of linkages with broader social movements and key policy institutions. Transforming the conditions of work of domestic workers and many other workers in the informal economy would have profound implications for the world of work and the future of labour law.

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