

CHODAWU'S OPINION REGARDING CONVENTION 189 IN RESPECT OF DECENT WORK FOR DOMESTIC WORKERS vis-à-vis TANZANIA LABOUR LEGISLATION

1. **We, CHODAWU**, the trade union protecting, safeguarding, advancing and advocating for Decent Work for Domestic Workers, have made a thorough analysis on a number of pieces of labour legislation regarding labour rights for workers in Tanzania including domestic workers.

The referred legislations include among others:

- i. The Workers Compensation Act, 2008 (No.20)
- ii. The National Social Security Fund Act (Cap 50 RE 2002)
- iii. Occupational Health and Safety Act, 2003 (No. 5)
- iv. The Employment and Labour Relations Act, 2004 (No. 6)
- v. The Labour Institutions Act, 2004(No. 7)

2. PROTECTION

At the onset, the opinion hereto opined serves the best interest of our union and its members, and in particular the domestic services workers.

3. ISSUES FOR CONSIDERATION.

- i. Whether the Tanzanian labour laws provide fundamental rights and protections to the domestic services workers the same as to the other workers.
- ii. Whether it is necessary to call for review and amendment of the referred legislations and make them compliant to the tenets of ILO Convention No. 189.

4. ANALYSIS:

In light of the issues raised in item 3 supra -

We, CHODAWU opine as we hereby do below-

- i. Workers Compensation Act 2008.

The main objects for the enactment of this law are-

- a) to provide for compensation to employees for disablement of death caused by or resulting from injuries or diseases sustained or contracted in the cause of employment,

b) to establish the Fund for administration and regulation of workers compensation.

The enactment of this piece of legislation is a result of a demand for a new policy framework on social security in line with socio-economic transformation taking place in our country.

With the above objects in mind, could we firmly assert that this legislation covers the domestic services workers?

Article 1 of Convention No.189 defines a "domestic worker" *as any person engaged to provide domestic services into the context of employment relationship*. On the other limb, the workers compensation law define "domestic worker" to mean:-

- a) *" any person, including an apprentice but excluding an independent contactors who works for another person or for the state and who receives or is entitled to receive any remuneration, and*
- b) *any person who in any manner assists in carrying on or conducting the business of an employer."*

Surely, this is a broad definition that includes domestic workers.

In respect of the "FUND", this shall depend on such approved rates based on the total wage bill, to be contributed by employers. Compensation shall only be paid to diseased dependants or injured workmen whose employers have been registered as "contributing employers" to the Fund. This arrangement is provided for under section 19(1) of Act 20 of 2008, which read as follows:-

"19.(1) Where an employee has an accident resulting in the employee's disablement or death, the employee or dependants of the employee shall, subject to the provisions in this Act, be entitled to the compensation provided under this Act."

Whereas, section 19(1) of the Act does include a domestic worker, section 71(1) of the said Act seems to exclude domestic workers based on the way it is coached, and more so, where it requires business employers to register to the Fund. The said section read inter alia-

71 "(1) An employer carrying on business in Tanzania shall within the prescribed period and in the prescribed form register himself to the Director-General and furnish the Director General with:-

- a) *the prescribed particulars of the employer's business, and*

b) any additional particulars he may require."

In view of this provision, CHODAWU is of a firm view that for domestic workers and their dependants to enjoy the right to compensation, this section should be amended to explicitly bind employers employing domestic workers, and such amendment, if done, will be in line with article 14 of ILO Convention No. 189.

ii. **Social Security:**

Upon reading the provisions of Section 2 of the National Social Security Fund Act No.28 of 1997 (NSSF) Cap.50 RE 2002) it may be construed that domestic workers are covered, more so when we look at the definition of the term "employee", which read *inter alia*,

"employee" means any person who:-

- a) is employed in mainland Tanzania under contract of services or apprentice with an employer, whether by way of manual labour, clerical work or otherwise and howsoever paid or*
- b) is permanently resident in mainland Tanzania and is employed outside mainland Tanzania under a contract of service with an employer in mainland Tanzania by whom he is paid."*

Mindful of this definition, does this law cover domestic workers?

Section 6 of this Act, seems to exclude domestic workers, which read *inter alia* –

*"s."*6(1)- every person who is a member of existing Fund shall be an insured person under this Act.

(2)-every person who is self employed or who is employed in the private sector, other than in a body which is Parastatal organization under the Parastatal Pension Fund Act. 1978, shall be registered as an insured person.

(3) -every non – pensionable employee in the Government services and parastatal organization shall be registered as an insured person.

(4)-the minister may be order in the Gazette, provide for the conditions and procedure under which any person who is not

eligible to become an insured person may so become.

By construing the provisions of this section, CHODAWU is of the view that subsection (1) of section 6 is in respect to the members of the then National Provident Fund (NPF) whereas subsection (2) is in respect to self employed persons or those who are employed in the private sector. Subsection (3) is in respect to employees in the Government service and parastatal organizations and subsection (4) is in respect to other employees who would not be insured persons save by order of the minister.

It is our humble submission that the use of the term “private sector” in context, exclude domestic workers in terms of section 6(9) which is quoted here below:-

6(9)- for the purpose of this section

Private Company means any corporate or un incorporate body whose fifty or more of its shares are not owned by the government.

Be it as it may, doubtful on whether an Order of the Minister has been Gazetted to include domestic workers in terms of section 6(5) of the Act, CHODAWU is of the opinion that the provisions of this Act should be amended to explicitly mention that domestic workers are entitled to enjoy protection under the framework of Social Security and in line with article 14 of ILO Convention No.189.

iii. OCCUPATIONAL HEALTH AND SAFETY

Like in the aforementioned laws, the term “employee” has been defined under section 3 of the Occupational Health and Safety Act No.5 of 2003 and includes domestic workers. It reads as follows:-

“Employee” means any person who:

- a) Is employed by or works for an employer and who receive or entitled to receive any remuneration; or*
- b) Works under direction or supervision of an employer or any other person.*
- c) Is apprentice;”*

The above definition is reinforced by the use of the term “workplace” which means “*any premises or place where a person performs work in the course of his employment.*” However, the provisions of section 16 and 17 of the Act, technically provide a narrow definition of the term “workplace” to exclude a “household.”

“S.16(1) – any person being the owner or occupier of a factory or work place shall, before operating be required to register

such factory or work place under this Act.

(2) – before any person occupied or uses as a factory or work place any premises, which were not so occupied or used by him at the commencement of this Act, that person shall apply for the registration of the premises.”

The requirement and procedures for registration of premises under the provisions of section 17 of the Act clearly demonstrate that this law did not target a household. This section reads as follows:-

“17(1) subject to the provisions of section 16, such person shall send to the chief inspector a written application containing the particulars set out in the first schedule to this Act, together with prescribed registration fees.

(2) where the chief inspector is satisfied that the premises are suitable for use as a factory or workplace he shall register the premises and shall issue to the applicant a certificate of registration in the form set out in the secondary schedule to this Act.

(3) the Compliance license in the form set out in the Third Schedule, shall be issued to the occupier of a factory or workplace every twelve months, upon fulfilling occupational health and safety requirements and on payment of the prescribed fees for registration and for compliance fee.”

This being the case, if the intention of the legislature was to include domestic workplace to be covered by this legislation, then CHODAWU would not hesitate to recommend that this law be reviewed and necessary amendments be made and a “workplace” to include a “household”. In so doing it will facilitate implementation of article 13 of ILO Convention No.189 .

iv . THE EMPLOYMENT AND LABOUR RELATIONS ACT, 2004(ELRA):

Contextually, this law applies to domestic workers. However, in view of the peculiarity of the domestic services sector, CHODAWU recommend for amendment of section 4(a) of the Act,

more so on the definition of the term “employee” to specifically mention a domestic worker.

Presently, section 4(a) reads as follows:

*S.4 – In this Act, unless the context requires otherwise, -
“Employee” means an individual who –
a) has entered into a contract of employment, or
b)
c)”*

It is our humble submission that the term “employee” be defined as here below provided:-

*“employee” means an individual who –
a) has entered into a contract of employment including a domestic worker,
or”*

The amendment, if so done, would certainly ensure that domestic workers like other workers enjoy fundamental rights and protection as enunciated in the law which by and large is consonant to the ILO Core Conventions.

Further, CHODAWU recommend amendment of PART III of ELRA to specifically provide employment standards for domestic workers especially those living at the employer premises. In so doing, this will facilitate implementation of article 9 of ILO Convention No.189.

iv. SHERIA YA TAASISI ZA KAZI, 2004 (LIA):

Briefly stated, the main object of this law was to establish and provide functions and powers of labour institutions for the administration of the Employment and Labour Relations Act, 2004.

This being the case, it is our humble view that should the ELRA be amended as herein recommended, it will facilitate domestic workers like other workers, to access with certainty services of the established labour institutions and thereby guaranteeing decent to work. In this context, it will facilitate Labour Officer/inspectors to undertake labour inspections in households purposefully to ensure labour law compliance by employers in this sector and that domestic workers are free from acts of harassment, intimidation, victimization and

discrimination in employment. Further, the recommended amendments will also facilitate implementation of articles 11, 16 and 17 of ILO Convention No.189.

WITHOUT PREJUDICE to the recommendations herein provided, CHODAWU find it important that a new law be enacted or review the LIA and put in place a new labour institution for coordination and supervision of employment agencies whose services among others, include supply of labour (workers) within and outside Tanzania.

5. CONCLUSION:

As observed in this analysis, there is reflection that labour laws in Tanzania fall short of explicit coverage of domestic workers and cater more for the other categories of workers. CHODAWU is therefore strongly advocating for the review and amendment of the laws as herein provided, and plug out the identified lacuna and secure equal treatment of workers without exclusion of domestic workers.

To this end, CHODAWU further advocate for the ratification of the ILO Convention No.189 regarding Decent Work for Domestic Workers.

Humbly submitted accordingly,

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CHODAWU