

from Centre for Applied Legal Studies

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sowpl.dwemp.note

**SECURITY OF EMPLOYMENT FOR DOMESTIC WORKERS/FARM WORKERS**

1. The extension of labour legislation to farm and domestic workers was the subject of recent investigations by the National Manpower Commission. Both have reported to the Minister of Manpower. (These were the second such investigations in recent times - the investigation by the then NMC in the early 1980's was never published).
2. The move to protection of farm workers is more advanced than domestic workers - the extension of the Basic Conditions of Employment Act (BCEA) and the Unemployment Insurance Act were to be debated in Parliament on 5 June 1992.
3. The extension of the BCEA to domestic workers can at best reach Parliament in 1993. For this to happen the Department of Manpower must prepare a draft bill and the appropriate joint committee of parliament needs to hear evidence from the public.
4. The extension of the BCEA to these categories of workers will not have a major impact in terms of creating greater security of employment.
5. This would have to be done by extending those provisions of the Labour Relations Act creating the industrial court to domestic workers and farm workers. Once this is done,



these workers would gain a measure of protection against unfair dismissal. *definition*

6. Although the legislative amendment required is relatively simple, the extension of the jurisdiction of the court to these categories of workers would have major administrative consequences. (An increased number of personnel would be required to staff the new courts and courts would have to be established in outlying areas.) *good for* It is envisaged that *action* this extension would accompany a restructuring of the industrial court to create a two-tier structure in which a "small claims" industrial court with unfair labour practice powers would deal with individual dismissal cases in respect of all workers (including farm and domestic workers).

7. One particular gap in legislation, that applies to all women workers, is the absence of any protection against dismissal for women who take maternity leave.

8. The above applies to employees in South Africa. Although certain homelands (Transkei, KwaNdebele and perhaps others) have extended labour legislation to domestic workers, in the others they remain without protection. There can be no realistic creation of security of employment for these categories of employees without a harmonisation of labour legislation.



## SECURITY OF EMPLOYMENT FOR PUBLIC SERVANTS

### A TEACHERS

- 1 Women teachers are subject to gender discrimination in the law and in the practices of the teaching profession. Legal discrimination against women (organised on a racial basis) means that they receive <sup>1</sup> few or no maternity rights, and <sup>2</sup> differential pension, <sup>3</sup> medical aid and <sup>4</sup> housing subsidy benefits. The forms of indirect discrimination include <sup>5</sup> unequal pay, <sup>6</sup> unequal division of labour, gendered teacher training, sexual harassment and the allocation of "feminine" tasks within schools such as "pouring the tea".
- 2 Teachers are presently excluded from the Labour Relations Act and from the current initiative to draw up a Public Service Labour Relations Act. // Teachers accordingly have no rights of freedom of association, collective bargaining and dispute resolution. Teachers in state schools have no recourse to the courts (civil or labour) in respect of "unfair labour practices".
- 3 In relation to job security, the rights of a women to retain her permanent status as a teacher after marriage is not always guaranteed. If an unmarried woman falls pregnant, this is regarded as "misconduct" and she is dismissed. Teachers generally are also restricted in their political participation :
  - 3.1 The Indians Education Act and Coloured Persons Education Act describe the following as "misconduct" which can lead to a disciplinary hearing: If a teacher "makes use of his position in the department to promote or to prejudice the interests of any political party, or presides or speaks at any public or political meeting, or draws up or publishes or causes to be published any writing or delivers a public speech to promote or to prejudice the interests of any political party" (s16(gA) in both acts).
  - 3.2 The Education Affairs Act (House of Assembly) sets out the position on civil and political rights of teachers in section 96 of the act. It allows a teacher to be a member of and in the management of a political party but states that he or she may not act politically in a manner which "may embarrass the department", act as a chairperson of a public meeting, publish in his or her name a document to further or prejudice a political party or use his or her position as a teacher to promote a political party.
  - 3.3 Regulation 15 of the 1981 regulations in terms of the Education and Training Act provide that a teacher cannot use his or her position to promote the interests of a political party/organisation; publish a paper or express him or herself in the press or in a public meeting on political matters. A teacher may



also not circulate documents relating to elections or work in respect of an election in a school, on school premises or at a school function,

**B**     POLICE

The Police Act does not appear to contain any discrimination in respect of job security. If there is such discrimination, it is likely to be found in the regulations made in terms of the act. I was unable to track these down due to time restraints.

There are restrictions on the political involvement of the police but they are appropriate to the role of the police.

**C**     PUBLIC SERVICE

There is no overt discrimination in the Public Service Act in respect of political freedom and job security. It may well be present in the regulations and practices of the public service.

The restrictions on political involvement appear to be appropriate to the role and position of public servants.

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CITIZENSHIP

**1**     The South African Citizenship Act and The Aliens Act

1.1 See the memorandum on these acts for details. The main problem with these acts is that they confer rights and benefits of citizenship and permanent residence unequally in respect of men and women. In particular, men are able to obtain rights and benefits for their families and dependants which women are unable to do. The proclamation of the Domicile Act will not change these discriminatory provisions.

**2**     TBVC citizenship : do women have lesser rights of citizenship than men?

In each case citizenship of the particular "independent state" is governed by the "constitution" act and a citizenship act.



- 2.1 Bophutatswana The Bophutatswana Constitution act provides for citizenship as follows (sec.80):
- 2.1.1 All Batswana defined by an act of parliament
  - 2.1.2 All persons legally domiciled for at least 5 years (this was automatic until 1978 when application had to be made). This a problem in so far as women follow the domicile of their husband.
  - 2.1.3 anyone else who applies and is accepted as a citizen

The Bop Citizenship Act is discriminatory. Persons born outside of Bop can only qualify for citizenship through the male line. This affects citizenship by birth and descent. The provisions regulating the acquisition of citizenship by registration or naturalisation grant greater rights and privileges to men and the dependants of men.

- 2.2 Ciskei The Ciskei Constitution act states that citizenship shall be obtained by birth, descent and naturalisation on such conditions as may be determined by an act of parliament.

The Ciskei Citizenship Act grants citizenship to persons born outside of the Ciskei only through the male line. The provisions regulating the acquisition of citizenship by registration or naturalisation grant greater rights and privileges to men and the dependants of men.

- 2.3 Venda The Venda Constitution Act regulates citizenship and appears to allow citizenship to follow either parent. \*The only discriminatory rule appears to apply to citizenship by registration/naturalisation which is dependent on 5 years domicile.

- 2.4 Transkei I have been unable to track down the Transkei Constitution and Citizenship Acts. It is probable that gender discrimination occurs in a similar maner to the other independent states.



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## THE BLACK (formerly TRIBAL) AUTHORITIES ACT

This statute enacted into law the system of tribal, regional and territorial authorities "with due regard to black law and custom" and conferred various legislative, executive and judicial powers on these authorities. In so far as the particular blend of "custom", tradition and parliamentary statute combine to reinforce patriarchal relations and structures in the bantustans and rural areas, the political participation of women will necessarily be affected. However, I cannot suggest any simple amendment to the Black Authorities Act which will alter this situation in the transitional period.

In the circumstances, I suggest that the GAC consult service organisations, researchers and persons working in the rural communities to establish the most pressing issues which affect women in these areas and the best way of addressing these issues. For example, the inability of women in many areas to participate in the decision-making (kgotla) affects their free and fair participation. How is this changed in the relatively short period of time before elections??