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“Quintessential Intersectional Subjects”: The Case of Zimbabwean Domestic Workers

By

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Dissertation

Submitted in the fulfilment of the requirements for the degree

Master of Arts in Politics

At the

University of Johannesburg

Supervisor: Prof Yolanda Sadie

May 2016
DECLARATION

I, Palesa Nqambaza, hereby declare that this dissertation submitted for a Master of Arts Degree in Politics at the University of Johannesburg is my original work and has not in its entirety or in part been previously submitted to another university.
ABSTRACT

The post-apartheid period in South Africa presented an opportunity for an increasing number of Zimbabwean women to migrate to the country, and many found employment as domestic workers. Because domestic work was not regulated by the government during the apartheid era, many employers exploited and abused their workers. However, since 1994, labour legislation such as the Basic Conditions of Employment Act has been extended to domestic workers, which resulted in the Basic Conditions of Employment Act, Sectoral Determination 7: Domestic Workers. While South African domestic workers should in principle be protected by these laws, the Act makes no mention of whether or not it also applies to migrant domestic workers. Furthermore, it appears that there is a misguided perception in society that labour laws do not apply to illegal immigrants.

Therefore, the aim of this study was twofold: the first aim was to establish whether employers of Zimbabwean migrant domestic workers in Johannesburg adhere to the legislation that protects domestic workers (such as Sectoral Determination 7: Domestic Workers) and, secondly, whether the race, class, gender and nationality of the respondents have a bearing on the kind of treatment they receive at work and society in general. Put differently, the aim is to establish the lived experiences of Zimbabwean domestic workers.

Based on 20 interviews conducted with Zimbabwean domestic workers from Johannesburg, the study found that while their experiences varied, the common thread among all of the respondents was that, to varying degrees, their employers did not comply with the provisions of Sectoral Determination 7. While a majority complied with requirements pertaining to remuneration and working hours, most employers contravened aspects relating to the registration of workers with the Department of Labour. Other obligations pertaining to contracts, job descriptions, maternity leave and UIF benefits were also largely breached by employers.

The study also found that the respondents were subjected to multiple forms of discrimination on the basis of their race, gender, class and nationality, which made their experiences unpleasant. Some of the respondents were subjected to overt forms of racism and xenophobia manifested in name-calling and the use of separate
plates and utensils from those used by the family. The failure of labour laws to
protect this group of workers has made them increasingly vulnerable to abusive and
exploitative employers, some of whom deliberately employ migrants to circumvent
labour laws and avoid fulfilling their obligations. Although this study cannot be
generalised to reflect the experiences of all Zimbabwean domestic workers present
in South Africa, it does provide some indication that there are still migrant domestic
workers whose vulnerable positionality is abused by employers for selfish gain.
Acknowledgements

Firstly I would like to thank my Lord and Saviour Jesus Christ, Undigcene ngci. I would also like to thank my supervisor, Professor Yolanda Sadie, it is on your shoulders that I stand today.

To mom, dad, Patamedi, Themba and Lesego, your support has been invaluable, thank you for walking this journey with me. I dedicate this dissertation to thousands of black women that work as domestic workers, I honour you.
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CHAPTER 1

INTRODUCTION, AIM AND SCOPE OF STUDY

1.1 Introduction

Through globalisation, transcontinental travel and trade have been made simpler; the world today is more interconnected than has ever been the case before. Global relations are increasing between governments, business and civil society (Munck, 2010:159). Although this phenomenon dominates everyday relations globally, there is no single definition of what globalisation really entails, as this phenomenon has many facets. According to Petras (2007:4), “globalisation refers to the cross-national flows of goods, investment, production and technology”. There are two forms of globalisation: the first and also the most prevalent is neo-liberal globalisation.

Neo-liberal globalisation necessitates a free movement of goods, capital and people (Jaggar, 2002:426). Secondly, flexibility is key to neo-liberal globalisation – flexibility in terms of labour and wages. Furthermore, neo-liberal globalisation has ushered in the rise of informality, as an increasing number of people find themselves in uncertain, difficult and unstable forms of employment. Examples of informal sector jobs include work in agriculture, domestic work and other forms of temporary employment (Munck, 2010:159).

An alternative to neo-liberal globalisation is what is called alter/counter-globalisation. Advocates for counter/alter-globalisation do not reject globalisation in its entirety. Rather, they argue for increased social justice and more equitable distribution of power resources globally. They view neo-liberal globalisation as unjust and exploitative towards the poor (Scholl & Freyberg-Inan, 2013:621).

Advocates for neo-liberal globalisation maintain that it has managed to contribute towards the prosperity of various countries. Moreover, they argue that labour rights in particular have improved due to globalisation, with organisations such as the International Labour Organisation (ILO) setting international labour standards.
However, there are also those who dispute this claim. According to the critics, globalisation has caused an unpleasant race between countries to attract foreign direct investment as well as multinational corporations. The country that wins is often the one with the lowest labour costs and the least regulated labour market. This phenomenon is a ‘race to the bottom’ that consequently impacts negatively on the rights of workers (Vadlamannati, 2015:3).

One of the most visible consequences of globalisation is the movement of people particularly from poor to wealthier countries (Jaggar, 2002:426). According to the ILO, the number of international migrant workers in 2013 reached 232 million, accounting for three per cent of the global population. Half of these international migrants are women (International Labour Organisation, 2014). Moreover, a 2008 study by the United Nations International Research and Training Institute for the Advancement of Women (INSTRAW) in conjunction with the South African Institute of International Affairs (SAIIA) revealed that Africans make up one fifth of global migrants.

As will be elaborated on in the subsequent chapter, there are multiple reasons why people migrate, which can be categorised into two segments, namely push and pull factors. Push factors refer to negative aspects that force individuals to leave their countries of origin. Examples of push factors include war, environmental degradation and famine. On the other hand, pull factors refer to positive aspects that attract one to the country of destination: these include a chance at improved economic prospects, family reunification or anything else that could attract a migrant. Push and pull factors are not mutually exclusive – both factors can come into play and simultaneously have a bearing on one’s decision to migrate (Piche, 2013:142; Gündüz, 2013:41).

According to a 2011 World Bank report (Ratha et. al. 2011), there were 30 million Africans in 2010 living outside their countries of origin. Of these 30 million migrants, France accounted for nine per cent, making it the largest receiving state of African migrants. Following France is Ivory Coast, accounting for eight per cent of African migrants, and South Africa, accounting for six per cent of African migrants. This makes South Africa the third largest recipient of African migrants in the world.
According to the International Organisation for Migration (IOM), recent and accurate data on migration is not always readily available. For instance, migration statistics within the Southern African Development Community (SADC) region are rare. Nevertheless, according to a United Nations (UN) (2008) report, most individuals that migrate within the SADC region migrate to South Africa (the economic powerhouse of the region), and women make up close to 40 per cent of these migrants.

Historically, migration was perceived to be the domain of men, while women, on the other hand, only migrated when accompanying their husbands and not on their own initiative. The SADC region is no exception to this. Gouws (2010:175) maintains that women from the Sub-Saharan region have been migrating since the 1960s, although as mentioned above, their migration was often linked to the movement of their husbands. Men would migrate to neighbouring countries in search of improved economic prospects and women would remain at home looking after the sick and elderly, while also raising children. However, since the 1980s women began to migrate on their own and not as part of their husband’s ‘luggage’ (Morokvasic, 1984; Gouws, 2010; Gündüz, 2013). This signalled the beginning of the feminisation of migration in the region.

By 2005, nearly half (47.4 per cent) of all international migrants were women who had migrated independently (Gouws, 2010:175). Moreover, evidence suggests that in the Sub-Saharan region, strong causal links exist between the feminisation of migration and the feminisation of poverty. Most migrant-sending states are those that were negatively impacted by the implementation of the Structural Adjustment Programmes (SAPs) of the Bretton Woods institutions. Although the implementation of SAPs had negative consequences on the broader socio-economic conditions of the Sub-Saharan states involved, the brunt was more heavily borne by women (Gouws, 2010:170). For instance, the cutting back of state expenditure on essential services such as health and education meant that poor people could no longer afford medical care and education (Sewpaul, 2005:109).

However, the life of migrant women in the host country is not without challenges. Domestic legislation and international statutes often do not adequately protect
migrants. Because migrants are not ‘citizens’ in the host country, they are often explicitly excluded by the laws of host countries, which deny ‘aliens’ certain protections. This exposes migrants to an environment where they are vulnerable to human rights violations and abuse. This is especially true for ‘illegal’ migrants (Satterthwaitte, 2005:8).¹

Scholars such as Tickner (2001) and Satterthwaitte (2005) document some of the hardships that migrant women in particular often experience. To begin with, they maintain that employment opportunities for migrant women are mostly in sectors that are unregulated and unchecked (such as the domestic service or sex industry), which increases women’s vulnerability to trafficking, abuse and exploitation (Satterthwaitte, 2005:8). Moreover, women end up in the lowest paying jobs, which are also considered to be low-skilled. These jobs are in spheres that are aligned to Western definitions of femininity and masculinity and maintain oppressive gender roles (Tickner, 2001:82).

Because South Africa is a regional economic powerhouse with a fairly stable political landscape, it is an attractive alternative for migrants in search of improved economic prospects. Table 1 below shows the number of migrants that travel to South Africa from neighbouring countries. Zimbabweans make up the majority of migrants within South Africa’s borders, making up a total of 1 909 081 in 2011, according to the South African Institute of Race Relations. Zimbabweans have been migrating to South Africa since the early 1990s; however, the number of both ‘legal’ and ‘illegal’ migrants grew significantly after 2000 due to the economic deterioration in Zimbabwe (Rutherford, 2008:1). In 2008, for example, the estimated unemployment rate in Zimbabwe stood at 94 per cent (Morreira, 2007:4). The unstable political and economic climate became a key catalyst pushing thousands of Zimbabweans to migrate (through both legal and illegal means) to neighbouring South Africa.

The second-highest number of migrants is from Mozambique (see table below), with a total of 486 839 in 2011, according to the South African Institute of Race Relations. Mozambican migrants in South Africa are less than one quarter of the total number

¹ There are different types of migrants that exist, and this will be elaborated on below.
of Zimbabwean migrants. The third largest group of migrants are those from Lesotho, who account for a total of 397 070. The following comparison between the number of migrants from the three different countries puts into perspective the extent to which Zimbabwean migrants dominate in South Africa.

Table 1  SADC immigrants to South Africa and remittances, 2011

<table>
<thead>
<tr>
<th>Country of origin</th>
<th>Permitted to work in SA</th>
<th>Not permitted to work in SA</th>
<th>Total</th>
<th>Total remittances R(millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td>6 186</td>
<td>4 016</td>
<td>10 202</td>
<td>25</td>
</tr>
<tr>
<td>Botswana</td>
<td>7 017</td>
<td>45 515</td>
<td>52 533</td>
<td>183</td>
</tr>
<tr>
<td>Congo (DRC)</td>
<td>29 106</td>
<td>52 293</td>
<td>81 399</td>
<td>125</td>
</tr>
<tr>
<td>Lesotho</td>
<td>79 132</td>
<td>317 938</td>
<td>397 070</td>
<td>1 754</td>
</tr>
<tr>
<td>Malawi</td>
<td>1 077</td>
<td>70 616</td>
<td>71 693</td>
<td>124</td>
</tr>
<tr>
<td>Mauritius</td>
<td>563</td>
<td>36 898</td>
<td>37 460</td>
<td>83</td>
</tr>
<tr>
<td>Mozambique</td>
<td>241 692</td>
<td>245 147</td>
<td>486 839</td>
<td>1 589</td>
</tr>
<tr>
<td>Namibia</td>
<td>163</td>
<td>21 419</td>
<td>21 582</td>
<td>52</td>
</tr>
<tr>
<td>Swaziland</td>
<td>14 473</td>
<td>103 097</td>
<td>117 552</td>
<td>391</td>
</tr>
<tr>
<td>Tanzania</td>
<td>79</td>
<td>5 187</td>
<td>5 267</td>
<td>10</td>
</tr>
<tr>
<td>Zambia</td>
<td>972</td>
<td>63 755</td>
<td>64 727</td>
<td>125</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>659 081</td>
<td>1 250 000</td>
<td>1 909 081</td>
<td>6 694</td>
</tr>
</tbody>
</table>

South Africa Survey 2013, South African Institute of Race Relations
In 2011 there were 659 081 Zimbabweans in South Africa with work permits and 1 250 000 without work permits. It is difficult to monitor the number of ‘illegal’ migrants entering South Africa, as they are undocumented. However, it was found that 40 000 Zimbabweans were deported in 2000, 72 112 in 2004, 127 000 in 2006 and more than 117 000 in 2007. This indicates an increasing trajectory (Rutherford, 2008:1; South African Institute of Race Relations, 2007:47).

Although it is difficult to determine the proportion of female migrants, a 2008 report by the Southern African Migration Project (SAMP) estimates that women make up 43.6 per cent of Zimbabwean migrants in South Africa, and many of these women find employment in the domestic service. This figure correlates with the overall statistic by the International Organisation for Migration that states that in 2013, 42 per cent of all migrants in South Africa were women. Because Zimbabwean citizens make up the largest group of immigrants in South Africa at present, this study focuses on female migrants from Zimbabwe.

Given the high proportion of migrant workers not permitted to work, Griffin (2011) highlights that a significant proportion of migrant domestic workers are irregular migrants, meaning they work without obtaining the relevant documentation and permits. They therefore work in the country illegally using tourist visas. According to Griffin (2011:85), “the domestic service does not fall under any category of labour migration permitted under South African immigration law or policy”, and this therefore makes it almost impossible for migrant domestic workers to obtain work permits legally. The Department of Home Affairs attempted to remedy this challenge by issuing a special dispensation notice in 2010 to issue work permits to Zimbabwean migrants (CoRMSA, 2010). However, only those that entered South Africa before May 2010 qualified to apply for this. Moreover, the work permits would only be for four years and had no guarantee of being renewable. Of all the female migrants that come to South Africa, seven per cent find employment as domestic workers (Budlender, 2014)

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2 These are the latest available figures.
3 Due to easy border crossing between Zimbabwe and South Africa, a larger number of illegal migrants could still remain in South Africa. It is also not clear how many illegal migrants re-enter the country after deportation.
Although this is not widely recognised by South African employers and employees, workers without work permits are also protected by the South African Constitution and South African labour laws. This was demonstrated in the labour dispute between *Discovery Health Limited v the Commission for Conciliation, Mediation and Arbitration and Others*, where the court ruled that undocumented migrant workers are also entitled to fair labour practices in line with the South African Constitution, which protects the rights of all workers in South Africa.

### 1.2 Aim of study

Given the fact that Zimbabweans make up the largest proportion of migrants in South Africa and that an estimated 43 per cent of these migrants are women, many of whom are employed as domestic workers, this study focuses on the experiences of Zimbabwean domestic workers living in Johannesburg, the economic hub of South Africa.

The aim of this study is twofold. Firstly, it aims to establish whether employers of Zimbabwean domestic workers in Johannesburg adhere to the legal provisions such as the Basic Conditions of Employment Act (2002), Sectoral Determination 7: Domestic Worker Sector (Sectoral Determination 7 hereafter), as well as Constitutional provisions on labour and human rights. Secondly, the study also aims to establish, using intersectionality as an analytical framework, whether the identities of the domestic workers contribute to shaping their experiences in any way.

The Basic Conditions of Employment Act: Sectoral Determination 7: Domestic Worker Sector is the first and only piece of legislation that solely focuses on domestic workers. It regulates matters pertaining to working hours, leave, basic working conditions, benefits and the right to unionisation. The South African Constitution, on the other hand (Section 23), maintains that “everyone has the right

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4 For the purposes of this study, Zimbabwean migrants, asylum seekers and refugees will be all referred to as migrants because drawing any distinction between the three groups is highly contested. Questions that have been posed by sceptics include whether or not Zimbabweans qualify to be refugees since their country is not currently in war (see Human Rights Watch, 2006: 8).
to fair labour practices”, while Section 9 maintains that “everyone is equal before the law and has the right to equal protection and benefit of the law”. This protects the rights and dignity of all workers within South Africa regardless of race, gender and nationality.

Specific question addressed include:

- Whether employers adhere to South African labour laws when employing migrant domestic workers;
- Whether the human and constitutional rights of migrant domestic workers are protected in practice;
- Whether migrant domestic workers are able to successfully seek state recourse in the event of disputes, abuse or exploitation by the employer or any member of society;
- Whether their migrant status has a bearing on the treatment they receive in and outside the workplace; and
- Whether the intersection of their gender, race, class and nationality contribute in shaping their experiences in the workplace.

This study draws its analytical framework from various scholarly contributions on migrants and domestic work, as well as applicable South African legislation. Both will be discussed in the subsequent chapter. The scholarly contributions include work by Cock (1980), Anderson (2000), Ally (2009) and Griffin (2011). Legislation guiding this study is the Basic Conditions of Employment Act 75 of 1997, Sectoral Determination 7 of the Domestic Worker Sector, the South African Constitution Act 108 of 1996 and the Convention 189 of 2011 titled “Decent Work for Domestic Workers”.

The International Labour Organisation (ILO) offers a rather vague definition of what a domestic worker is: “a wage earner working in a private household, under whatever method and period of remuneration, who may be employed by one or by several employers who receive no pecuniary gain from this work” (International Labour Organisation, 1951). The Basic Conditions of Employment Act, No 75 of 1997, Sectoral Determination 7, Domestic Workers (Sectoral Determination 7 hereafter) defines a domestic worker as
any domestic worker of independent contractor who performs domestic work in a private household and who receives, or is entitled to receive pay and includes

a) a gardener
b) a person employed by a household as a driver of a motor vehicle
c) a person who takes care of children, the aged, the sick, the frail or the disabled
d) domestic workers employed or supplied by employment services

However, for the purpose of this study, the definition of a domestic worker is narrowed down to include only women who work in private residences performing domestic chores such as cleaning, cooking and child-minding.

1.3 Literature review

There are two strands of scholars that study migration: those that apply micro-individual analysis, mainly focusing on the individual, and those that apply a macro-structural analysis focusing on factors that influence migration in a global context. Piche (2013:142), for example, who applies micro-individual analysis, argues that before an individual takes a decision to migrate, he/she undertakes a cost benefit analysis. Based on this calculation, the decision to migrate will then be attributed to the positive factors that the country of destination offers, weighed against the negative factors of the country of origin. Oucho (2002) demonstrates the causal relationship between poverty and migration. Oucho argues that poverty stimulates emigration, because people leave for richer countries in search of improved economic prospects.

As mentioned above, migrants weigh costs and benefits prior to migrating. An example of some of the negative aspects that come with migration is the disruption of the nuclear family structure. Scholars such as Lu & Treiman (2011) argue that migration disrupts family structures, as migrant parents are less present in their children’s lives. However, migration also adds value because it allows the parents the opportunity to send remittances back home. Lu and Treiman found these remittances particularly improved the educational prospects of the children of black families. Makina (2012) conducted a study on the characteristics of Zimbabwean
remittance senders in South Africa. He found that men and married people remit more than women and singles. Moreover, migrants with basic education send more money home than is the case with those with tertiary qualifications.

Makina (2012b) also conducted a study investigating the probability of Zimbabweans returning to their home country. He found that the intention to return home is influenced by six factors, which are: the reasons for migrating, the number of dependents supported in the home country, the level of education of the migrant, economic activity in the home country, the level of income and the duration of stay in the host country. Should Zimbabwe achieve political and economic stability, Makina maintains that many Zimbabweans would be willing to return home.

Migrants often encounter problems of “adaptation, assimilation and acculturation” in countries of destination (Burawoy, 1976:1051). Globalisation has created diverse and multicultural societies, raising other issues such as racism and xenophobia (sometimes a combination of both). These differences are often difficult to manage (Piche, 2013:154). The challenge is not that the migrant is unable to integrate into their new environment, but rather that social, political and legal structures deliberately prevent the migrant from integrating fully (Burawoy, 1976:1051). For instance, Rutherford (2008), who studied the experiences of Zimbabwean farmers in the Limpopo province and the challenges they encounter, found that their labour is devalued because of their Zimbabwean citizenship. Employers perceived them as willing to work very hard for extremely low wages.

The second group of migration scholars (those that apply a macro-structural analysis) examine factors that influence migration in a global context. In this approach, the focus is on different variables such as the economic environment, technology, political factors and the social environment (Piche, 2013:145). In this regard, Gündüz (2013:41) for example attributes the increase of migration to the growing inequalities between developing and developed countries. According to this view, the growth in migration is proportional to the growing inequalities between countries.
Due to growing inequalities and extreme poverty, it is becoming increasingly difficult to make a clear distinction between migrants and refugees. Scholars such as Mingot & Cruz (2013) discuss this challenge. They argue that when factors such as poverty force individuals to migrate, the migrant cannot be said to be migrating out of free will and therefore should be classified as a refugee (also see Morreira, 2007; Olaniyan & Okeke-Uzodike, 2015; Lindley, 2014). Therefore, Burawoy argues that individuals that migrate should not be perceived as rational actors who decide to do so in order to maximise their interests out of free will. Rather, their actions are dictated by suprarmarket institutions that direct the flow of labour beyond anyone’s control, therefore forcing them to migrate (Burawoy, 1976:1051).

The feminisation of migration

Literature on migration has mainly focused on men as the key actors in migration. However, there has been a shift in migration that also necessitates a focus on women as key actors. Scholars such as Morokvasic (1984) and Gündüz (2013) have covered the feminisation of migration. In her article, Morokvasic (1984:886) argues that:

women from the peripheral zones, to whom local production and dissolving economic sectors did not offer any more opportunities, represent a ready-made labour supply which is, at once, most vulnerable, the most flexible and, at least in the beginning, the least demanding work-force.

Furthermore, she maintains that not only are these women perceived as cheap labour, but they are also pushed into sectors which are sexually segregated. This argument is also advanced by other feminist scholars such as Tickner (2001) and Satterthwaite (2005). For instance, domestic services are portrayed as the most natural employment for young women (Morokvasic, 1984: 886).

As mentioned above, the perception that has for a long time dominated the migration discourse is that women do not migrate independently; they migrate accompanying a spouse or male head who, according to western ideology, is the breadwinner of the family, with the woman a dependent (Morokvasic, 1984:887). This misconception has been used to shape policies relating to migration that paint the female migrant as the ‘luggage’ the man brings into the country of destination (Morokvasic, 1984:
889). This creates several implicit restrictions for women who wish to travel independently.

In a study on migration (between South Africa, Zimbabwe, Mozambique and Swaziland) by Dodson et al., (2008), it was found that there were significant differences among the behavioural patterns of male and female migrants, as well as differences in their profiles. For instance, their study found that while generally more men migrate than women (only 15 per cent), the picture is very different when it comes to Zimbabwean migrants, with women making up 43.6 per cent of the total number (also see Gubhaju & De Jong, 2009 and Ranga, 2015).

Labadie-Jackson (2008:72) argues that like men, women are propelled by different push and pull factors to migrate. Economic pressure falls under the former, while pull factors include family reunification or improved employment prospects in the country of destination (also see Mahapatro, 2010; Shanthi, 2006; Iman & Mani, 2013).

This occurrence is not only limited to Southern Africa – it is global. For instance, the experiences of female migrants from Latin American countries are documented by scholars such Staab (2004) & Cerruti (2009), who contribute to the discourse on the increasing feminisation of intra-regional migration in South America. They cite stringent migratory controls by countries such as Spain, which were previously preferred host countries, for the decline in international migration and the rise of intra-regional migration. Women in search of better economic prospects, and who want to escape from domestic abuse and civil armed conflicts, explore more viable host countries within the region to migrate to.

Gouws (2010), on the other hand, offers a comprehensive overview of the status of migration in Africa, particularly between two African regions, namely Southern Africa and West Africa. She draws attention to the causes of increasing migration, citing increasing globalisation, the feminisation of poverty and increasing inequalities globally (among others) as reasons why women choose to migrate. Her work, which mainly focuses on female migration, highlights the manner in which women are increasingly migrating independently. Despite greater access for women to the labour market as a result of neo-liberal globalisation, women populate the lowest
paid and lowest skilled jobs with the least job security. Examples of such employment include working as data capturers, factory line workers or seasonal farmers. However, in the Southern African region, an increasing number of women are involved in cross-border trade, enabling them to build cross-border trading relationships in both their host country and their countries of origin. Gouws (2010:172) refers to the phenomenon as “simultaneous embeddedness”.

While the migrant experience is not always pleasant, a positive aspect is that in some cases, migration liberates women from oppressive patriarchal bondages. Migrant women are presented with opportunities to move from traditionally patriarchal environments to more modern societies, thus improving their status (Morokvasic, 1984: 892). In addition, waged work affords women a degree of independence that they could not enjoy before. However, there are multiple challenges that various scholars cite that pose serious challenges to women that migrate. For instance, Ullah (2007) discusses the hindrances to female migration in Bangladesh, which include aspects such as religion, language barriers and illiteracy.

Women that migrate also have to compromise time with their family upon moving to a different place to work. This is potentially traumatic for women who perceive their social status to be measured by how adequately they care for their families. According to Morokvasic (1984:893), the migration of women tends to affect family stability. Other factors that contribute to the feminisation of migration include aging populations and growing numbers of elderly people who require care. This is further exacerbated by neo-liberal policies that advocate for the rolling back of the welfare state (Gündüz, 2013:33).

Although this is not always the case, the feminisation of migration has brought with it a new phenomenon that Gündüz (2013:34) calls the “care drain”. This occurs when women, who usually take the responsibility of caring for young and old people in their own countries, move to wealthier countries to care for the young and old for a wage. As a result, migrant workers who leave their young behind in turn hire other nannies back home, who also then leave their own children behind to care for the children of their employers (also see Kontos, 2013).
This creates a “care chain” Gündüz (2013:34), with women leaving behind their families to work for richer families or families that are better off than they are (also see Fakih & Marrouch, 2014). Gündüz (2013:34) argues that “the commodification of care connects women by gender, but separates them by race, class and ethnicity”. An additional effect of the feminisation of migration is that of ‘brain drain’. When women leave their host country to work in another, as was the case with South African women leaving to work as nurses abroad, the host country is often left with the burden of urgently filling the gap that occurs in its skills base (Hull, 2010).

Jamie (2013) and Lefko-Everett (2007) also contribute to an understanding of the increasingly popular phenomenon of female migration between African countries. Jamie (2013) focuses on female migration between Ethiopia and Sudan; he attributes the increasing demand for female labour internationally to the availability of work in the domestic sphere, entertainment and in factories. Lefko-Everett (2007) documents the feminisation of migration within Southern Africa and the challenges that women encounter in the process, particularly when migrating to South Africa. Her study found that (as is the case with studies mentioned above) an increasing number of women are migrating independently as breadwinners for their families. However, on arrival in South Africa, migrant women find themselves in low-skilled jobs, with difficulty accessing social security and healthcare (among other benefits) because of their migrant status.

Scholarship on migration also exposes the imbalanced power relations between employers and their employees. For instance, Bonnin and Dawood (2013) explore the inherent tension in the shared space of the domestic worker (as their workplace) and the private space of the employer. These two actors have to constantly negotiate the boundaries within this shared space, with the employer being in the dominant position as the owner of the home and the employer. This relationship exposes the skewed power relations between employers and their workers.

Similarly, Yeoh and Saco (2014) conducted a study to investigate whether people that embraced cosmopolitanism in society by embracing different cultures and
people also embraced their domestic workers in a similar manner. They sought to establish whether the employer’s cosmopolitan ideals feature in the feminised private sector, such as domestic work. Their findings were that often they do not: while employers embrace different cultures outside of their homes, this attitude does not extend to their private spaces where their domestic workers are concerned. The reason for this is because domestic work is reserved for women who are perceived as social and ethnic ‘others’. Preference for this occupation is given to women that fit the prevailing racial and ethnic stereotypes of “lesser” people (Labadie-Jackson, 2008: 78). The impact of the intersection of race, ethnicity, gender, class and migratory status (among other variables) on migrant women is often neglected in discourses around migrant domestic labour.

Morokvasic (1984:895) also notes that there is an interrelationship between discrimination related to gender, class and immigrant status, with the most potent being discrimination related to immigrant status. For example, according to Labadie-Jackson (2008:78), in the context of the USA, the ideal domestic worker is seen as a Spanish-speaking migrant woman and no longer an African American woman. Many migrant women are forced to work as domestic workers because it does not require any so-called ‘high skills’, and yet the women can still earn better wages than they would at home and thus are able to send back remittances (Labadie-Jackson, 2008:75). However, some of the women that work as domestic workers are qualified to do more skilled work.

Scholarly work also exists that explores the experiences of South African domestic workers. The classical contribution in this regard is the work by Cock (1980), Maids and Madams, which documents the evolution of the South African domestic labour sector. This sector is the largest single sector that employs mainly black women in South Africa. However, it has undergone significant transformation and continues to evolve, reflecting the changing face of sexual, racial and other forms of domination (Cock, 1980). The implication has thus been that women who hold these positions are perceived more as servants than workers. These ideas have been further

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5 The term ‘cosmopolitan’ refers to a way of life that embraces and celebrates different cultures, countries and people.
emphasised by the lack of legal protections and the large degree to which this sector is left unregulated.

Cock (1980) gives a compelling narrative of how Europeans initially brought their own domestic workers (often white women) from Europe to South Africa. Xhosa women and the Khoikhoi are recorded to have started working as domestic workers as early as 1777 for Dutch settlers in the Eastern Cape. However, the picture is slightly nuanced when it comes to British settlers. When the British migrated to South Africa in the 1820s, they migrated with their own domestic help, as mentioned above. The domestic workers were willing to move to South Africa with their employers because migration presented an opportunity to move away from the domestic sector once in South Africa (Cock, 1980:191).

Once white women found better employment in South Africa, black women, Khoikoi, Indian and coloured people began replacing them, and in no time black women completely dominated the sector. Black men were also incorporated into the domestic sector, but mainly as status symbols for wealthier families. The domestic sector was the first point of entry into the colonial economy that black people had. It is also important to note that black people did not enter the domestic sector out of free will: after being dispossessed of their land by the Europeans and losing their livelihood, entry into this sector was a means of survival (Cock, 1980:191).

Before 2002, there were no laws in South Africa that were dedicated to regulating the domestic worker sector or that covered the workers for occupational injuries (among other things). Women working in this sector were neglected by the apartheid government and had no bargaining power in the workplace whatsoever. Grant (1997:61) highlights that it is under these conditions that the marginal position of domestic workers became solidified. She argues that the low status of the domestic worker sector can be attributed to the ideologically low status accorded to work done by women and black people in societies plagued by patriarchy and racism respectively. Testament to this is the fact that domestic labour has been historically shifted towards people of a lower social standing each time a change in societal relations occurs (Grant, 1997:62).
More contemporary contributions include work by Fish (2006) focusing on social change in South Africa in terms of paid domestic labour, while Ally (2009) and Cock (2011) examine the evolution of the domestic labour sector from apartheid to post-apartheid. They argue that the voices of domestic workers remain unheard to this day. Although these works do not directly pertain to migrant domestic workers, they do however, provide some indication of the experiences of South African domestic workers, highlighting the asymmetrical power relations between domestic workers and employers. None of the abovementioned contributions focus on the experiences of Zimbabwean migrant domestic workers in South Africa.

While the domestic sector became a site for abuse perpetrated by employers on employees in the absence of laws and regulations protecting domestic workers, the dawn of democracy presented a beacon of hope for improved working relations between domestic workers and their employers. However, it was only in 2002 that the first law dedicated to protecting South African domestic workers was adopted. Although many scholars and activists exalted the ushering in of Sectoral Determination 7 as the saving grace for many women working in this sector, scholars such as Magwaza (2008) argue that the law failed to change the lives of South African domestic workers in practice.

Magwaza’s (2008) study found multiple limitations in Sectoral Determination 7. She highlights the complex nature of domestic work and argues that because of this complexity, it is difficult for government to monitor compliance by employers in this sector. Furthermore, the enactment of this law made conditions worse for some domestic workers. For instance, some of the domestic workers she interviewed mentioned how they had not received their annual salary increases because their employers told them that according to the law, their salary was way above the legal minimum wage requirement (also see Brown and Reynolds, 1994 and du Preez et al., 2010).

Moreover, a study conducted by Matjeke et al. (2012) found that after Sectoral Determination 7 was enacted in September 2002, the number of people employed in the domestic sector dropped from 1025 million to 977 000 in the first year of enactment. Contributing to this drop is the fact that many employers dismissed their
South African domestic workers on the grounds that the new laws set minimum wage standards too high and they could then no longer afford them. This contributed towards slowly transforming the South African domestic labour sector into a field dominated by the lowest bidders: workers that are willing to work for whatever the employer is willing to offer.

Studies conducted on migrant domestic workers not only focus on their working conditions, but their wellbeing too. For instance, Dinat & Peberdy (2007) explore the risk and vulnerability of migrant domestic workers to HIV exposure in South Africa. Migrant domestic workers that live with their employers are often restricted and do not have sufficient contact with their children and spouses. Dinat & Peberdy, (2007) found that while many of the women interviewed in their study were often not exposed to infectious diseases such as the flu, they did not seem to be protecting themselves sufficiently from HIV infection (also see Camlin et. al., 2010).

On the other hand, Griffin (2011) conducted a study on illegal Basotho domestic workers in South Africa. Her findings share stark similarities with studies conducted on migrant domestic workers in other countries such as the United States of America. The commonalities included the heavy presence of abuse and exploitation of migrant workers. Moreover, migrant workers in all cases were very reluctant to pursue state recourse to air their grievances because of shared fears of being identified, prosecuted, and deported (these insecurities will be elaborated on in the subsequent chapters).

Evidence suggests that the domestic labour sector is undergoing an additional shift, not just nationally but globally, where domestic worker posts are increasingly filled by migrant women from less developed countries. This signals an additional shift in power dynamics and social relations where local women of colour hold a better status in relation to foreign women of colour. In the case of South Africa, Zimbabwean women (alongside women from Lesotho) are the ones that are gradually populating this sector, although South African women are still in the majority. According to Budlender (2014:28), 13 per cent of domestic workers in Gauteng are migrant women.
1.4 Method of research

This is a qualitative study based on scholarly articles, newspaper articles, books and government policy documents that are relevant to the study. In addition, 20 semi-structured personal interviews were conducted with Zimbabwean domestic workers living in Johannesburg. This section is dedicated to discussing the methodology of this study.

Selection of respondents

The snowballing technique was used to select the respondents. The snowballing technique is a method used to find groups of people that would be otherwise hard to reach. It relies on networks of people to gather data (see Handcock & Gile, 2011:2; Johnston & Sabin, 2010:39). The first group of three respondents were obtained from existing acquaintances of the candidate, after which she relied on referrals made by these acquaintances to other domestic workers from Zimbabwe.

However, in order to allow for a possible diversity of experiences and thus mitigate the risk of obtaining biased results, an effort was made to interview, for example, respondents from different racial/ethnic groups and different geographical locations (within Johannesburg) to ensure broad representation. While it was not easy to establish the exact income of the families the domestic workers interviewed worked for, research conducted by Spark Media was used to estimate this aspect.

Only Zimbabweans that are working, or have worked as domestic workers in Johannesburg for a minimum of three months were interviewed. The minimum period of employment in Johannesburg and area of employment were minimum criteria. The author welcomed both legal and illegal migrants for interviews; it also did not matter whether the potential respondents were employed part time or full time, because the study sought to capture these differences. The process of interviewing stopped when a saturation of data occurred. The interviewer started observing patterns in the answers of the respondents after 11 interviews were conducted, though continued with a further nine interviews to ensure that a range of views and experiences were captured.
Although the results of this study are not representative of the experiences of all Zimbabwean domestic workers in Johannesburg, nor of those in other parts of South Africa, they nevertheless give some indication of their experiences.

**Ethical considerations**

The purpose of this study was explained to the respondents, and they were also informed that all interviews were done anonymously. They were not required to reveal their or their employer’s identity. They were only asked to confirm the suburb where they worked and the racial profile of their employer for research purposes. It was also emphasised that they had a right not to answer a question if they so wished and that they could terminate the interview at any point should they feel uncomfortable.

The interviews were not conducted at the domestic workers’ workplaces; they were conducted in neutral places such as parks, community halls and places of worship. Five of the domestic workers did not feel comfortable meeting with the interviewer physically and preferred to do the interviews telephonically. They cited trust as the reason; they said they had no way of knowing whether the interviewer was a Department of Home Affairs official.

**Respondent profiles**

A total of 20 interviews were conducted with female Zimbabwean migrants who had worked as domestic workers for no less than three months. Seven of the respondents were employed by black employers, nine by white employers, three by coloured employers, one by an Indian employer and the remaining two by Arabs. Furthermore, some respondents have worked for employers of a different racial group from the one that they were with at the time of the interviews. Therefore, they were also able to provide insight on the kind of treatment they received when working for an employer of a different racial group. Only five respondents have worked for the same employer since their arrival in South Africa. The ages of the respondents ranged from 22 to 53 years of age. Twelve of the interviewees worked full time for their employers while eight worked part time for different employers on
different days. None of the women interviewed could be classified as a ‘casual worker’, because they all worked for more than 24 hours a month. Table 2 below gives a breakdown of the suburbs in which the respondents work, as well as a profile of the suburb in terms of race and average monthly income.

<table>
<thead>
<tr>
<th>Suburb</th>
<th>Suburb Profile</th>
<th>Number of Respondents</th>
<th>Respondent Pseudonym</th>
</tr>
</thead>
<tbody>
<tr>
<td>Krugersdorp</td>
<td>Predominantly white, average income of R25 871pm</td>
<td>3</td>
<td>Domestic worker 1 from Krugersdorp</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Domestic worker 2 from Krugersdorp</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Domestic worker 3 from Krugersdorp</td>
</tr>
<tr>
<td>Lindhaven</td>
<td>Cosmopolitan, average income of R25 618pm</td>
<td>2</td>
<td>Domestic worker 1 from Lindhaven</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Domestic worker 2 from Lindhaven</td>
</tr>
<tr>
<td>Cosmo City</td>
<td>Predominantly black, average income of R28 480 pm</td>
<td>1</td>
<td>Domestic worker from Cosmo City</td>
</tr>
<tr>
<td>Central Johannesburg</td>
<td>No Data</td>
<td>1</td>
<td>Domestic worker from Central Johannesburg</td>
</tr>
<tr>
<td>Strubens Valley</td>
<td>Predominantly white, average income of R25 618pm</td>
<td>1</td>
<td>Domestic worker from Strubens Valley</td>
</tr>
<tr>
<td>Florida</td>
<td>Cosmopolitan, average income of R25 618pm</td>
<td>2</td>
<td>Domestic worker 1 from Florida</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Domestic worker 2 from Florida</td>
</tr>
<tr>
<td>Northern Johannesburg</td>
<td>Predominantly white, average income of R38 853 pm</td>
<td>1</td>
<td>Domestic worker from Northern suburbs in Johannesburg</td>
</tr>
<tr>
<td>Dainfern</td>
<td>Cosmopolitan, average income of R40 363 pm.</td>
<td>1</td>
<td>Domestic worker from Dainfern</td>
</tr>
<tr>
<td>Rosettenville</td>
<td>Predominantly black, R19 602pm</td>
<td>1</td>
<td>Domestic worker From Rosettenville</td>
</tr>
</tbody>
</table>

7 Average income refers to the average household income of the employer.
The respondents consisted of women who entered South Africa both legally and illegally. The techniques that the respondents used to regularise their stay in South Africa also varied. Only six of the respondents had official work permits that allowed them to work in the country; the others used asylum papers and passports to regularise their stay. This will be elaborated on in the fourth chapter.

**Questions and analysis of results**

Questions that were asked during the interviews (based on the analytical framework explained in the third chapter), among other things, focused on the working conditions of the domestic workers such as the number of hours they work, the frequency of their family visits and the nature of their relationship with their employers. The respondents were also asked questions pertaining to their access to conflict resolution bodies such as the CCMA in case of work disputes with their employer and whether they thought their identities (as Zimbabwean black women) in any way contributed to the shaping of their experiences.
With the exception of one interview (one was reluctant to have their interview recorded), all the interviews were recorded. The candidate took notes during the interview with the respondent who did not want to be recorded. Generally, the interviews took an average of 30 minutes. Twelve of the interviews were conducted in English and eight were conducted in IsiZulu, which were later translated to English. These were then transcribed and thematically analysed in terms of the analytical framework set out in Chapter 3. The candidate conducted, transcribed and translated the interviews herself.

1.5 Structure of study

This first chapter provides the aim, scope and method of research of the study. It also provides an overview of the scholarly literature on migration, the feminisation of migrant and domestic work and clarifies key concepts used in the study. Chapter 2 gives a background of the study and also discusses the gendered nature of migration and domestic work. Chapter 3 is devoted to the analytical framework which guides this study, while Chapter 4 analyses the working environment of Zimbabwean domestic workers in terms of South African labour legislation. Chapter 5 is devoted to discussing the lived experiences of the domestic workers as a result of the intersection of their race, gender, class and nationality. The chapter explores how the ‘matrix of domination’ shapes their social interactions with their employers, society and civil servants. The ability of migrants to seek state recourse in the time of disputes is also explored. A summary of the main findings is provided in Chapter 6.

1.6 Conceptualisation of key concepts

This section is dedicated to clarifying key concepts used in this study that are often confused. These are: migrant, immigrant, emigrant, legal and illegal migrant, asylum seeker and refugee.

*Migrants, immigrants and emigrants*

According to the International Organisation for Migration, there is no single internationally accepted definition of what a migrant is. The Organisation generally
defines anyone that decides to move from one place to another (whether between or within states) out of personal convenience as a migrant. The United Nations Educational, Scientific and Cultural Organisation (UNESCO), on the other hand, give a more in-depth definition of what it considers to be a migrant. UNESCO makes reference to the UN Convention on Rights of Migrants that defines a migrant as a “person who is to be engaged or has been engaged in a remunerated activity in a state of which he or she is not a national” (UNESCO, 2015).

However, a precondition is that a migrant is someone who freely decides to migrate without any compulsion, whether as a result or war, poverty or any other unpleasant factor. There is also emphasis on the period of stay within the host country, which implies that migrants are people that move to specific places or countries of destination for specific periods of time and not permanently (UNESCO, 2015).

According to UNESCO, an additional category of migrants exists, i.e. highly skilled and business migrants. These refer to highly qualified individuals who hold executive positions. These are people that “move within the internal labour markets of transnational corporations and international organisations” (UNESCO, 2015). A further category consists of irregular migrants, including undocumented and illegal migrants; this category will be unpacked in greater detail below. The final category (also discussed below) is that of forced migrants, comprising displaced people, refugees and asylum seekers.

The International Organisation for Migration does not define what an emigrant is; however, they define emigration as the “the act of departing or exiting from one state with the view of settling in another” (International Organisation for Migration, 2015). Therefore, based on this definition, it can be deduced that an emigrant is an individual that leaves one state to settle in another.

**Legal, illegal and irregular migrants**

There are various types of migrants that exist and they can therefore not be lumped into one category. According to Sabates-Wheeler & Feldman (2011:5), society is constructed in such a manner that different categories of migrants have different
rights and entitlements associated with the categories they belong to. A distinction is drawn between legal and illegal migrants. The question of what an “illegal” migrant is has been a subject of great debate over the years. This is because various states have different restrictions placed on non-citizens, and failure to comply with one of the restrictions can easily render one an illegal migrant, automatically criminalising the person (Sabates-Wheeler & Feldman, 2011:7).

The subject of legality and illegality is a complex one; a migrant might be legal in one respect but illegal in the next (Sabates-Wheeler, Feldman, 2011:7). For instance, if a migrant enters South Africa on a tourist visa for three months, they are legally in the country. However, once that migrant holds employment during the three months without a work permit, they are working in the country illegally. This means that they are legally in the country as tourists, but are working illegally. Anderson (2000:175) argues that “A person’s immigration status refers to how they are positioned within a system (of laws, regulations and practices) and in particular whether they are regular … or undocumented”.

The Migrant Rights Network distinguishes between illegal migrants and undocumented or irregular migrants as follows: illegal migrants are those that commit a criminal offence, for instance, entering a country through illegal means or using fraudulent papers. Irregular or undocumented migrants are those that commit an administrative offence: they could enter a country legally as students or tourists, but they stay beyond the authorised period or seek employment without the necessary documents (Griffin, 2011:85; Tevera & Zinyama, 2002:19). In South Africa, the Department of Home Affairs has recently adopted the term “undesirable” to denote people that overstay their allocated time.

According to Wickramasekara (2009:1248), migrants are pushed to pursue irregular and illegal migration routes because states have strict and selective admission policies that make it difficult for certain groups to enter the country. Once in the country of destination, illegal and undocumented migrants often feel pressured to live in isolation because they fear being identified by the authorities. Once identified, they risk being deported (Griffin, 2011:85). They also end up working in sectors that are unregulated, dangerous and pay poor wages, such as sex work or domestic work.
There are also those that migrate legally or illegally and, once in the country of destination, manage to obtain citizenship fraudulently. This opens up opportunities for them to lead a decent lifestyle and secure employment in the formal sector (Tevera & Zinyama, 2002:19).

Refugees and asylum seekers

According to the 1951 Refugee Convention, a refugee is someone who:

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.

Signatories of the 1951 Refugee Convention have an obligation to provide the protection that asylum seekers need by giving them temporary or, if need be, permanent residence status. In line with the definition above, the South African Department of Home Affairs defines a refugee as “a person who has been granted asylum status and protection in terms of the Section 24 of Refugee Act No 130 of 1998” (Department of Home Affairs, 2015a).

An asylum seeker, on the other hand, is someone who is applying in a country of refuge for refugee status but whose claim has not been approved officially and therefore has not been granted refugee status (UNHCR, 2013). Asylum seekers are not guaranteed refugee status once they apply for it. There are specific criteria that need to be met in terms of the 1951 Refugee Convention, and if an applicant fails to meet these, they will not be granted refugee status.

Critics have argued that the criteria that need to be met in the 1951 Refugee Convention to qualify for refugee status is biased towards the male asylum seeker at the expense of the female asylum seekers. Moreover, owing to different laws in varying countries, asylum seekers may be defined differently from one country to the next (UNESCO, 2015). Similarly, the South African Department of Home Affairs defines an asylum seeker as “a person who has fled his or her country of origin and
seeking recognition and protection as a refugee in the Republic of South Africa, and whose application is still under consideration” (Department of Home Affairs, 2015a).

1.7 Conclusions

Numerous push and pull factors contribute to the reasons why people migrate. These include socio-economic reasons such as unemployment and lack of access to opportunities, or political factors such as wars and political instability. The rise of globalisation and the relative ease with which people move beyond borders has aided in the popularisation of migration as a viable alternative for those that seek change.

Within the Southern African region, South Africa, alongside Botswana, is one of the most favourable destinations for aspiring migrants. In South Africa, Zimbabweans make up the biggest proportion of migrants.

For many years, migration was mainly the prerogative of males. However, this has changed in the last decade or two. Women make up 43.6 per cent of migrants from Zimbabwe, but they still find themselves in the lowest ranks of employment such as domestic work, working under difficult and exploitative conditions with little protection from the law.

With this in mind, the aim of this study is to establish whether the employers of migrant domestic workers adhere to labour laws which regulate the domestic worker sector. Furthermore, it aims to ascertain whether the identity of the migrant domestic workers plays a role in shaping how they are treated in the workplace and in society.

The existing literature provides a background for this study in terms of documenting why people migrate and their experiences as migrant workers in countries of destination. The literature review also documents well the growing popularity of the feminisation of migration and how the presence of migrant women becoming domestic workers is becoming a norm.
While a number of studies have been conducted on the general experiences of migrant domestic workers from various countries in the SADC region, it is evident that a study that specifically focuses on Zimbabwean domestic workers in the Johannesburg region has not been undertaken. By interviewing 20 domestic workers from Zimbabwe in order to establish their experiences as intersectional subjects in the workplace, it is hoped that this study fills this scholarly void. The respondents were selected by making use of the snowballing technique. The following chapter provides a background for this study.
CHAPTER 2
MIGRATION PATTERNS AND POLICIES

2.1 Introduction

This chapter is devoted to contextualising migration between Zimbabwe and South Africa. It tracks the trajectory of Zimbabwean migration to South Africa from the first wave, dominated by white migrants after Zimbabwe’s independence in 1980, to the third wave of predominantly black Zimbabwean migrants in the early 2000s. It also highlights the different push factors that contributed to the migration of different groups at different periods, including Zimbabwe’s independence, political violence and a rapid economic deterioration.

Following the above, this chapter also provides a brief overview of the evolution of South African immigration laws in response to the increasing presence of migrants in South Africa. South Africa has had a long history of exclusionary immigration laws that are characterised by racism and sexism. As part of a broader strategy by the apartheid government to maintain power, immigration laws welcomed white people while keeping out black people, with temporary cheap labourers being an exception. This section particularly captures how immigration laws of the apartheid era were left unchanged for a number of years since the democratisation of the country in 1994. It also shows how their legacy shaped the current immigration laws.

The last part is dedicated to a contextualisation of the feminisation of migration. It highlights the migration of Zimbabwean women to South Africa and their experiences as migrants. Specific attention is paid to the manner in which the intersection of race and gender has especially disadvantaged Zimbabwean women who are not only black, but are also women in a country with a legacy of racist and sexist immigration laws. Consequently, Zimbabwean women are pushed into the undocumented sphere where they have to rely on jobs in the informal and unregulated sectors such as domestic work or in the agricultural sector for employment.

2.2 Background: Zimbabwean migration to South Africa
As already mentioned in the preceding chapter, Zimbabweans are currently the largest group of migrants in South Africa. Migration between Zimbabwe and South Africa mainly started during colonial times and gained popularity in the 1980s. Before Zimbabwe’s independence, South Africa routinely recruited male workers from Zimbabwe to work in the booming South African mining industry. The country used Zimbabwe as a reservoir of cheap labour. Some, although very few, of the mine workers chose to travel to South Africa with their spouses. The migration of black women was not promoted during the apartheid era. Once in South Africa, the women mainly played the role of caregiver to their husbands who worked in the mines (Lefko-Everett, 2007; Schachter, 2009:8; Mawadza, 2009:3).

Migration from Zimbabwe to South Africa without recruitment started in the 1980s. This period can be referred to as the first wave of migration. It was mainly white people that moved to neighbouring South Africa as a response to Zimbabwe gaining independence and the threat of ending white privilege. In response to the perceived threat, many white Zimbabweans moved to South Africa, which conveniently had its system of white supremacy and domination still intact (Schachter, 2009: 8; Mawadza, 2009:3).

In 1991, Zimbabwe was pressured by the IMF (International Monetary Fund) to implement Structural Adjustment Programmes (SAPs) as a condition after Zimbabwe took out a loan from them. Whether or not the Zimbabwean economy was in trouble at the time of the SAPs’ implementation is a highly contested subject. Kingston et al. (2011) argue that the Zimbabwean economy was not in crisis, and the loan was merely taken out to intensify the growth of an economy that was already doing well. Makoni (2000), on the other hand, argues that the Zimbabwean economy was under pressure at the time of the implementation of SAPs.

However, with SAPs in place, the results were the complete opposite. The Zimbabwean economy was negatively impacted and began to suffer drastically. A significant percentage of the population lost their jobs, the middle class began to shrink and economic hardships intensified. For example, within a year of implementation, the country’s real GDP fell by just below eight per cent, manufacturing output shrunk by 14 per cent between 1991 and 1996 and teachers’
wages fell by 43 per cent by 1993 (Kingston et al., 2011; Crush et al., 2012). Moreover, a study conducted by Makoni (2000) found that women were heavily affected by SAPs. Once the Zimbabwean government cut back on funding education, many families decided to send boys to school instead of girls; this was seen as a more viable long term investment. Instead of educating girls who would one day get married and be taken away from the family, parents chose to invest in the education of the boy child.

In 1991, the year in which SAPs were implemented, there was a 0.47 per cent decrease in the number of girls enrolled into secondary education, while in the same year there was a 1.88 per cent increase in the number of boys enrolled into secondary schools. When the figures are adjusted for dropout rates, it was found that annual dropout rates between 1991 and 1992 were twice as high for girls than boys (Makoni, 2000). The economic decline motivated the second wave of migration, which began in the early 1990s with mainly black Zimbabweans seeking better economic prospects in neighbouring South Africa. The collapse of the apartheid system in South Africa during this period made the country even more attractive to Zimbabweans (Schachter, 2009:8; Mawadza, 2009:3).

The third wave that began in the early 2000s, which is potentially the most radical, saw thousands of Zimbabweans fleeing the country at a time. The push factors included a mixture of both economic and political reasons. In the early 2000s, President Mugabe imposed a radical land redistribution programme, which saw land being taken by force from white owners without compensation. Food production was heavily affected by these programmes, which resulted in large amounts of agricultural land stopping production (Mawadza, 2009:3). Soon thereafter, Mugabe implemented Operation Murambatsvina, where urban slums that were believed to house Zanu PF opponents were cleared by the government. This also accounted for the displacement of significant numbers of people; others lost their businesses and their livelihoods in the process. Zimbabwe became both politically and economically unstable (Mawadza, 2009:3; Crush et al., 2012:12).

With the country’s economy under severe pressure, plagued by high inflation and low productivity coupled with political instability, many Zimbabweans decided to flee the country for neighbouring South Africa (Schachter, 2009:8). Besides fearing for
their lives and wellbeing, Zimbabweans became attracted to South Africa’s perceived political and economic stability (Schachter, 2009:6). In attempts to evade the risk of having more Zimbabweans entering South Africa than the country could handle, the South African government responded by strengthening migrant entry requirements (Crush et al., 2012:8).

Post-apartheid immigration policies

South Africa’s immigration policies have had a long history of racism, sexism, xenophobia and the exclusion of certain groups, particularly Africans. These policies often discriminated against black migrants from neighbouring African countries in particular (Segatti, 2011: 35). For instance, according to Section 4 (3) (b) of the 1937 Aliens Control Act, applicants wishing to migrate to South Africa should be “likely to become readily assimilated” with European inhabitants and should not pose a threat to European culture. This meant that those deemed less likely to become “readily assimilated” are automatically excluded.

In 1986, amid the peak of political instability during the dying days of apartheid, the 1937 Aliens Control Act was amended. The government removed the racial clause in the immigration laws. However, Segatti (2011:37) argues that regardless of these amendments, race continued to play a key role in shaping the decision whether to grant applicants entry into South Africa, with white people still being the preferred group. In addition to race, qualifications and skills, as well as wealth, served as selection criteria. Of interest is the fact that immigration laws inherited from the apartheid government were left unchanged by the ANC government until 2002, as will be shown below (Segatti, 2011:32).

According to Segatti (2011:34), the government adopted a “two gate policy” in which “the front gate welcomed people who met the criteria of attractiveness defined by the governing minority. The back gate served a double function, preventing unwanted migrants from entering and allowing cheap and relatively docile labour in for temporary periods”.

Although South African immigration laws have historically favoured white males to the exclusion of the black migrant, the situation is even grimmer when it comes to black female migrants. While black males were recruited to work on the mines, black
female migrants remained undesirable. This was part of a bigger project to preserve a racist society that maintained white domination (Segatti, 2011:34). In 1991, the Aliens Control Act was amended once again. The amendment mirrored a unification of all the immigration laws from 1937 to 1991. Although the Act still retained some discriminatory practices such as using words like “him” and “his” to refer to migrants, implying that migration is a prerogative of men and declaring as “prohibited persons” individuals that are “not in possession of sufficient funds” or those “likely to become a public charge by reason of infirmity of mind or body”, conditions that are vague and vulnerable to discriminatory interpretations. Still, the Act was retained until 2002 with only minor alterations along the way (Dodson, 2001:74; Segatti, 2011:38).

Under the Aliens Control Act, the police had the power to arrest, detain and repatriate illegal migrants without granting them access to a court of law. In terms of Section 55 of the Act, “no court had any jurisdiction to review, quash, reverse, interdict or otherwise interfere with any proceeding, act, order or warrant of the Minister, a board, an immigration offer or a master of ship”. This meant that when captured, the fate of the migrants was left in the hands of military personnel or the police whose track record of human rights abuses was questionable.

Since 1994, the Department of Home Affairs largely focused on solving the perceived ‘problem’ of illegal migrants, often alleged to be black Africans. The state responded to this perceived problem by investing its resources into the apprehension and repatriation of Africans to their countries of origin, especially those from the SADC region. For example, in 1997 a total of 176 184 Africans were repatriated to their countries of origin (Peberdy, 1999:19).

However, when it comes to the issuing of permits to stay in South Africa, Africans do not dominate as they do when it comes to deportations. For instance, in 2011 Statistics South Africa released a report that documents the number of people that received various permits to stay in South Africa, including temporary residence permits, work permits and visitor’s permits. In 2011, 24 per cent of work permits went to Zimbabweans migrants, 20.4 per cent went to Chinese, 12.5 per cent went to Indians and 4.8 per cent went to Pakistani migrants. These are the countries from which the highest number of migrants received work permits. Africans do not even make up 50 per cent of these statistics. When it comes to business permits, the
picture is even grimmer: Nigeria is the only African country represented in the top eight countries of recipients of business permits, coming in third with nine per cent of total business permit recipients (Statssa, 2011).

In 1995 the Aliens Control Act was amended to be more inclusive. The language used in the amended Act was gender neutral. It only replaced the words “he” with “he or she”. However, the Act still did not make provisions that would really free women from gender-based discrimination when entering the country. On the contrary, the situation for women was to some extent made worse. Prior to the amendment, foreign wives of South African citizens (although mainly white) could be granted permanent residence in the country. However, this was not the case for foreign husbands of South African citizens.

Nevertheless, under the amended 1995 Aliens Control Act, neither wives nor husbands of South African citizens automatically qualified for permanent residence upon marrying a South African citizen. This was done with the aim of eradicating the number of people that enter the country as ‘fake’ spouses of South African citizens. As a result, spouses were separated from their partners. Those who wished to apply for temporary and permanent residence had to return to their country of origin to make the application. Very rarely they were allowed to apply on South African soil (Dodson, 2001:74).

Instead of making the 1995 Aliens Control Amendment Act gender sensitive, the resulting amendments proved to be gender blind. The main reason that prompted the move away from the 1991 Aliens Control Act was the manner in which the Act contradicted the Constitution that the democratic South Africa was founded on. It was therefore subject to constitutional review.

In addition to the 1995 amendments, a further amendment took place in 1996 to tighten migration restrictions. Foreign nationals who wanted to apply for work permits and visas had to do so in their respective countries. This was done in order to prevent migrants from entering the country using tourist visas and then looking for work illegally (Peberdy, 1999:19). This process of visa application was also accompanied by heavy costs to the applicant. In order to obtain a visa to travel to South Africa, bank statements proving sufficient funds and a letter of invitation from a
friend or relative that permanently resides in South Africa were required (Peberdy & Crush, 1998:31).

In November 1996, the then Minister of Home Affairs Mangosuthu Buthelezi appointed a task team mandated to write a Green Paper on International Migration. This was published in 1997. A White Paper on Refugee Affairs was published in 1998, as well as an additional White Paper on International Migration in 1999. None of these publications did much to contribute towards relaxing the country’s draconian immigration laws and adopting a more human-rights-centred approach to immigration (Segatti, 2011:32).

Leading up to the publication of the Green Paper in 1997, the general expectation was that it would become a game changer that would finally separate South Africa from the racist laws of the apartheid regime. However, these expectations were not met, as changes were only partial. The emphasis was to replace a racially motivated immigration policy with one that is non-racial and non-sexist. It was assumed that this was enough to remedy all the challenges created by the apartheid policies. However, Neocosmos (2010:78) argues that that was not the case – non-racial policies were not enough to prevent discrimination against certain groups of people. Moreover, ‘foreigners’ are still disadvantaged and denied rights that are crucial to human survival. For instance, besides not being allowed to work in the country without a work permit, foreigners are also denied trading rights (Neocosmos, 2010:79).

The Green Paper was also not gender sensitive. For instance, it maintained that “rules of entry [would be] driven by labour-market need”. This provision was not clear on exactly what ‘labour-market need’ is. It only stated that those that would be admitted into the country should have “desirable skills, expertise, resources and entrepreneurial will”. Dodson (2001:76) argues that this provision would in effect disadvantage women once again; as preference would be given to skills in areas such as mining which are male dominated. Women dominate in sectors such as domestic labour, which in terms of the policies, are not deemed ‘desirable’. On the other hand, the Green Paper suggested that cross-border trading (including small-scale and informal trading) would be allowed. This is an area in which women dominate and would therefore be an advantage.
The Green Paper was rejected and a White Paper on International Migration soon followed in 1999. To begin with, the task team that drafted the White Paper was not representative. Dodson (2001:78) highlights the fact that Winnie Madikizela-Mandela was the only female representative on the team. Contributions from the public were also somewhat restricted by not allowing the public to participate in the process to have their say. As a result, the gender blindness of the Green Paper was left unaddressed; the White Paper was virtually silent on matters of gender (Dodson, 2001:78). Furthermore, Neocosmos maintains that the White Paper used misguided statistics to support the argument that South Africa needs strict border controls due to the high unemployment rates, meaning African migrants were targeted once more (Neocosmos, 2010:83).

Wealth and skills were still used as criteria for migration to South Africa. According to the White Paper:

The people who can add value to our growth and development are those who invest, are entrepreneurs and promote trade, those who bring new knowledge and experience to our society, and those who have the skills and expertise to do the things we cannot properly do at this stage.

This provision not only disadvantages many African men who do not always necessarily have the money and high skills to “add value to our growth and development”, it especially disadvantages women who are (according to global statistics) often poorer than men. This means that the White Paper also failed to take South Africa to a non-racial, non-sexist promised land. South Africa is not unique in this regard; many countries that are popular to migrants from less developed countries often adopt stringent migration policies to try and regulate entry to their countries. Examples of such countries include the United States of America and Australia.

The White Paper became a Bill in 2000 with some contentious provisions. To begin with, the Bill gave the police the power to stop anyone that they suspect to be an illegal migrant and have them prove their status (whether legal or not). In addition to this, a “community enforcement policy” was enacted which empowered citizens to help the state “root out” and report illegal migrants (Neocosmos, 2010:83).

This led to an incident in October where 76 shacks in Zandspruit belonging to Zimbabwean nationals were burnt down by locals. Zandspruit locals claimed that
Zimbabweans were responsible for crime in the area and must therefore leave (Mail & Guardian, 4/10/2000). The section making provision for community enforcement was subsequently scrapped. However, the police still maintain the power to harass and intimidate suspected foreigners on the streets. This is just one example among many others of the schizophrenic nature of South Africa's position on immigration and xenophobia (Neocosmos, 2010:84).

Neocosmos (2010:82) further argues that xenophobia in South Africa is systematically embedded in immigration legislation. A clear distinction between citizen and foreigner is drawn. The foreigner is deprived of certain rights crucial to human survival. Migrants are perceived as social and economic threats to the South African economy, rather than as agents that are actively taking part in reducing inequality within the SADC region and strengthening regional integration. For instance, when women migrate to South Africa, it is very unlikely that it will be for protracted periods of time (Dodson, 2001:80). Migration is used as a temporary solution to some of the challenges migrants face back home with regard to poverty or unemployment.

While the argument that South African immigrations laws continue to discriminate on racial basis could be said to be inaccurate since race is not explicitly mentioned in the statutes; still, one cannot ignore the fact that South African immigration laws do discriminate against the poor. Skills and affordability are important entry requirements. The criterium of class tends to disadvantage people from neighbouring African countries who often don't meet the requirements. Consequently, immigration policies exclude more black people than whites, even if this is an unintended consequence.

Nevertheless, Dodson (2001:81) lauds the White Paper (which later translated into the Immigration Act of 2002) for the progress it made on achieving gender sensitivity. To begin with, she argues that although the White Paper was generally gender blind and failed to remedy past injustices against migrant women, she admits that the provision that allows for the sustenance of the informal sector would greatly benefit migrant women. Moreover, the government provided for short term entry permits for wives of male migrant workers to enter the country for specific periods. The only disadvantage is that people that enter the country on short term permits could not be
allowed to work in the country. Furthermore, foreign spouses of South African citizens were given permanent resident rights (Dodson, 2001:81).

Segatti (2011:39) argues that the issue at hand was not so much that the new government did not have the will to change immigration laws; rather, she argues they did not have the necessary expert knowledge on the broader field of migration to fully understand how to address the pressing issues. The reason not to fully grapple with the issue of migration could be attributed to the fact that the government found the issue to be complex. Because of this, the issue of immigration was deliberately prevented from being “conceptually linked with other pressing developmental concerns”. Furthermore, the confusion was exacerbated by the lack of a homogenous stand point on immigration within both the government of national unity and within the ANC itself (Segatti, 2011:32).

Comments by ANC members expose the contradictory nature of the different positions on immigration and xenophobia held within the ANC. While individuals such as Rob Davies and Penuell Maduna have underlined the need for improved immigration policies that reflect both South Africa’s moral obligation to its neighbours and highlight the prospective economic gains that could accompany relaxed immigration policies, ANC policies continue to reflect a strict securitarian approach (Segatti, 2011:39). At the 2002 ANC conference, a resolution was adopted calling for “the ANC and government [to] revisit and deal with the necessary amendments of the Immigration Act, which must include measures to deal firmly with illegal immigration” (Segatti, 2011:52).

In the period 1995 to 1999, the government availed three opportunities for amnesty to undocumented migrants. The first one in 1995 was intended to regularise the stay of migrants that had worked in the mines for more than 10 years and voted in the 1994 elections. The second one followed in 1996 to regularise the stay of migrants (from the SADC region) who had lived in South Africa for more than five years and had a spouse or dependents in South Africa. The last one, in 1999, was intended to accommodate Mozambicans who were fleeing the war in Mozambique during this period (Migration News, 2000). Segatti (2011:55) argues that this was done to display South Africa’s eagerness to be part and parcel of SADC.
The new Immigration Act was eventually passed in 2002 and later amended in 2004. The Act remained silent on women. Mine workers (who happen to be mainly male) and farm workers (both male and female) were allowed entry into the country. However, unskilled and semi-skilled workers outside the two mentioned sectors were not allowed into South Africa. This policy unintentionally (or intentionally) disadvantaged women (Peberdy, 2008:804).

The 2004 amended Immigration Act also made provision for spouses of South African citizens to be granted permanent residence under the partnership clause. The people that acquired permanent residence under partnership clauses were then required by law to remain in the relationship for a minimum period of five years. The inherent danger with this provision is that women that find themselves in abusive relationships would not be able to leave until the five year period lapses.

In addition to all the abovementioned migration policy amendments, the Department also increased its capacity to track down and repatriate illegal migrants by increasing the number of Internal Tracing Units from three to 14 (Crush, 1999:8). In 2010, the government also introduced a National Movement Control System, which facilitates the movement of migrants coming in and out of the country, and this system makes it easier to prevent migrants from entering the country illegally (Goitom, 2013).

A Border Control Security Framework was set up by the South African government, which is governed by the Border Control Operational Coordinating Committee, consisting of the South African National Defence Force, the South African Police Service, National Intelligence, The Department of Home Affairs, The Department of Transport, The Department of Public Works, The Department of Agriculture, The Department of Health and the South African Revenue Service. The task of the Border Control Operational Coordinating Committee “is to oversee all state agencies operating [the] country’s borders” (Border Control Operational Coordinating Committee, 2014).

Nonetheless, the imposition of stricter entry measures had adverse results: incidences of irregular/undocumented migration grew as a result of the stricter visa regime (Crush et al., 2012:9). As already mentioned earlier, while it is difficult to ascertain the exact number of illegal migrants entering the country, Crush et al. (2012) indicate that between 1990 and 1997 a total of 102 335 Zimbabweans were
deported. This figure gives some idea of the scope of the challenge with the illegal entry of migrants into South Africa.

According to Segatti (2011:56), “between 2005 and 2009, Zimbabweans were subject to massive deportations and abuses at the hands of smugglers and the police. They also faced great difficulties accessing asylum”. In 2009, as pressure from NGOs mounted because of the negative treatment of Zimbabweans by both the government and civil society (especially in light of the 2008 xenophobic attacks), the government responded by issuing a special dispensation where certain categories of Zimbabweans were granted temporary permits to stay in the country. Within this period, they were also allowed to work in the country (although not issued official work permits). However, this process was plagued by incapacity and mismanagement and as a result the process took a long time and was often unproductive. However, this victory was short lived, because by September 2010, the government announced that deportations of Zimbabweans would resume in January 2011 (Segatti, 2011:56).

The motivation behind the resumption of deportations by January 2011 by government was once again unclear. According to Segatti (2011:56),

It is unclear to what extent the police, the government and the business sector communicate, but periods of “tolerance” and “crackdowns” alternate conveniently with periods of labour needs and labour surplus, as exemplified by the relaxation of restrictions on Zimbabwean migrants when South Africa needed their labour in preparation for the 2010 Soccer World Cup.

By 16 May 2014, President Zuma and the new Minister of Home Affairs signed into effect new amendments of the Immigration Act 13 of 2002. Although multiple changes were made to the Immigration Act, this paper will only mention the changes which pertain to this study. Firstly, the Department of Home Affairs now outsources the handling and processing of visas to a private company, Visa Facilitation Services (VFS). VFS charges a standard R1 350 handling fee for each application they process (VFS.Global, 2014). This is an exorbitant fee that a significant proportion of migrants from the SADC region simply cannot afford.

Moreover, spouses of South African nationals can no longer apply for temporary residence permits using tourist visas. They will be required to return to their country
of origin to make this application at a South African mission. Since the Dispensation of Zimbabweans Project expired in December 2014, an average of 250 000 Zimbabweans were expected to return home to apply for extensions (News24, 20/05/2014). The new regulations provide that those that overstay their visas are then declared undesirable and banned from entering the country for periods ranging from one year to five years.

It seems that the post-apartheid government, much like the apartheid government, continues to adopt a ‘securitarian’ approach to migration that mainly views ‘foreigners’ as suspect and uses draconian measures to police borders, as opposed to an human-rights-centred approach. The securitarian approach is vulnerable to abuse by immigration and security officials, as was the case with the preceding government. The challenge is exacerbated by the fact that there continues to be a combination of xenophobic, racist and sexist overtones in the South African migration agenda that are yet to be confronted.

2.3 Clandestine migration: The root of xenophobia?

While the draconian migration regime may have managed to contain (to some extent) the entry of those so-called ‘undesirable’ migrants, it has also stimulated the growth in clandestine migration by those determined to enter the country at all costs, especially in light of the dire situation in Zimbabwe. Migrants have come up with creative ways of bypassing the system.

Irregular/undocumented migrants enter the country using two methods: the first group enters officially using tourist visas, but stays on beyond the authorised period. Organisations such as Africa Check have confirmed that obtaining accurate data on migration in South Africa is very difficult; however, Crush et al. (2012) indicates that in 1997 alone, just under 800 000 Zimbabweans overstayed their allocated time in South Africa. The second group enters unofficially using illegal border-crossing points. Both men and women are increasingly involved in illegal border-crossing activities (Schachter, 2009:8). The former method is the most preferred, especially among women, because it is also considered to be a safer option (Lefko-Everett, 2007). While it is difficult to establish the number of people (by country) that have been deported in the last decade, reports by the Department of Home Affairs provide a slight indication. The table below illustrates a steep decline, and then rapid growth
thereafter, in the number of deportees since the 2007/2008 financial year of the Department of Home Affairs.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Deportees</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007/2008</td>
<td>370 000</td>
</tr>
<tr>
<td>2009/2010</td>
<td>1 060</td>
</tr>
<tr>
<td>2011/2012</td>
<td>75 336</td>
</tr>
<tr>
<td>2013/2014</td>
<td>131 907</td>
</tr>
</tbody>
</table>

Zimbabweans are generally fluent in English and therefore have an advantage over migrants from French- or Portuguese-speaking African countries (Mosala, 2008: 2). As mentioned above, many secure jobs in temporary or casual employment sectors such as farming and domestic work. Since these sectors often have little or no legal provisions protecting workers, they are vulnerable to abuse and exploitation (Mosala, 2008:3).

Although this is not always the case, a large proportion of Zimbabweans that migrate to South Africa find it to be beneficial. As the economic situation in Zimbabwe deteriorated, finding any form of employment in “South Africa represents an improvement of their subjective conditions” (Mosala, 2008:17). Zimbabweans do not have high expectations of wages and working conditions — any form of employment represents an improvement from the situation back home (Mosala, 2008:17).

A study conducted by Crush et al. (2012) found that only 18 per cent of Zimbabweans that migrated to South Africa were unemployed during the period of study (in 2010). The rest were able to find some sort of means to generate an income. Those that find employment in South Africa remit money regularly. Remittances have been credited for keeping the Zimbabwean economy afloat (Schachter, 2009:8).

South Africans perceive the increased presence of migrants as a threat to their job security and livelihoods. The presence of undocumented migrants in South Africa has fuelled xenophobia, targeted mainly (although not exclusively) at Zimbabweans, who are also the largest group of migrants, accounting for approximately 1 909 081
of South Africa’s migrant population as indicated in Chapter 1 (Schachter, 2009:7; South Africa Survey, 2013).

In 1997 the South African Human Rights Commission identified xenophobia as a major concern compromising human rights and democracy in South Africa (Crush, 2001: 2). Moreover, the Southern African Migration Project (SAMP) also conducted a study in 2001 and found that a majority of South Africans are hostile towards migrants. For instance, it was found that 60 per cent of South Africans sampled believe that migrants weaken the South African economy (Crush, 2001: 3).

With regard to undocumented migrants, South Africans expressed even greater hostility: 85 per cent of those interviewed by SAMP maintained that undocumented migrants should not even have the right to free movement or freedom of speech, regardless of the fact that the South African Constitution guarantees these freedoms to everyone within the country. In addition, 60-65 per cent of those interviewed even held that undocumented migrants should not be entitled to legal protection or protection by the police (Crush, 2001:4).

In 2012 the Human Sciences Research Council (HSRC) released a report that states that from 2003 until 2007, South Africans that work in the urban informal economic became more xenophobic. In 2003, only 33 per cent of the respondents said they did not welcome foreigners into the country. By 2007, this figure had increased to 47 per cent. By 2010, only 32 per cent of the respondents stated that they welcomed all immigrants to South Africa. This demonstrates that xenophobic perceptions among the South African population have increased over time (HSRC, 2012:1).

Therefore, with the above trends in mind, it is not surprising that in 2008 there were widespread xenophobic attacks against African foreign nationals. According to the Forced Migration Studies Programme (2009), 62 people died, 342 shops owned by foreigners were looted and between 80 000 and 200 000 people were displaced during the 2008 xenophobic attacks. There was a resurgence of similar attacks in 2015.

2.4 The feminisation of migration
In the discussion above on Zimbabwean migration trends to South Africa, it is evident that women are largely invisible. However, this does not only pertain to African female migrants. For instance, South Africa has a long history of encouraging white immigration as part of a larger project to maintain white superiority. However, white women too were absent from the official discourse around migration during this period. Peberdy (2008:801) notes that women only began to appear in official letters and memoranda following the introduction of the 1913 Immigrants Regulations Act, and then after the 1960s and 1970s. Before that, white women were so-called ‘silent spouses’ that were only considered to be migrating as part of their husbands’ luggage, as mentioned earlier.

The situation for black women, on the other hand, was even worse. They did not exist in the official discourse around migration because they were not welcome. They were deemed ‘undesirable’, ‘contaminators’ and ‘disrupters’ of the social order. One of the few reasons that black male migrants were somewhat accepted into South Africa was because they were considered nothing more than mine and farm workers that would stay in South Africa temporarily (Peberdy, 2008:801). The South African national identity for a long time was constructed as male and white. This is why women’s citizenship was attained through a man. Female migrants were only included as mothers and wives (Peberdy, 2008:80).

A study by Lefko-Everett conducted in 2007 (as mentioned above) demonstrates that more women are making unilateral decisions to migrate and seek better employment or conduct businesses in order to take care of their families back home. They are migrating to work as traders, farmers, domestic workers and some as professionals in their respective fields. This phenomenon is becoming increasingly popular as a result of increasing poverty in developing countries (Lefko-Everett, 2007:1; Gouws, 2010:172).

The main factors that push women to migrate include poverty, unemployment, food scarcity and harsh living conditions (see Gouws, 2010). Lefko-Everett’s study found that it is mostly women who are single or widowed that migrate independently, because the burden of assuming the role of the breadwinner to take care of the family. To a lesser extent, women also cited political instability, intolerance and
gender inequality as some of the push factors that led them to migrate to South Africa (Lefko-Everett, 2007:14).

The general perception in poorer SADC countries is that there is a degree of opulence in families that have a family member that has migrated to South Africa. Society perceives them to be well off, and they come across as leading a life of a better standard than the rest of the community (Kihato, 2013). This is one of the dominant factors that attract women to migrate to South Africa. Women use migration as a strategy to look after their children’s and family’s material needs and education. Migration offers them an opportunity to have a sense of independence. Zimbabwean migrants admit that after migrating to South Africa, their economic circumstances improved (Kihato, 2013).

However, there is no correlation between improved economic standing and pleasant social relations. Xenophobia continues to negatively impact the experiences of migrant women. This means that while migrant women could be thriving economically, their stay in South Africa may not necessarily be pleasant. Harassment, abuse and exclusion are daily features of their lives. In order to circumvent persecution, migrant women have developed what Lefko-Everett calls “coping mechanisms”, which help them to try and assimilate. The aim is to avoid being identified by the public and government officials. They change their dress code and mannerisms (for example, the way they walk) (Lefko-Everett, 2010:280).

Migrants often have high expectations of what they will find upon arrival. They are often attracted to the perceived employment opportunities and a better quality of life, including quality health care, education and social security (Kihato, 2013). On the other hand, some migrants hear stories from other migrants of the dangers of migrating to South Africa (Lefko-Everett, 2007:18). However, the perceived benefits overshadow all risks that accompany migrating: risks of rape, crime and xenophobic attacks on South African soil (Lefko-Everett, 2007:14).

**Route to South Africa**

Another feature that distinguishes the migration of women from that of men in the context of Southern Africa is that of the routes taken to enter South Africa. Lefko-Everett (2010:273) found that women are more likely to enter South Africa using
legal routes than is the case with men. This could be because entering the country illegally is very risky (Lefko-Everett, 2007:21; Lefko-Everett, 2010:273). When entering the country illegally (alternatively known as using the ‘back door’), migrants run the risk of being detected by border patrols and being detained and deported back to their home country. More hazardously, illegal migrants travel by foot in dangerous deserted areas where they run the risk of being robbed, raped or murdered by criminals (Lefko-Everett, 2007:22; Lefko-Everett, 2010:275).

*Malaisha* is a term that is used to denote groups of men that help people cross borders illegally through bushes and other areas where they will not be easily detected for a certain fee. However, they are also criminals and sexual predators who sometimes take advantage of vulnerable women looking to cross into South Africa illegally. Immigration and police officers are also known to take advantage of migrant women in exchange for certain favours such as granting entry into South Africa without proper documentation (Lefko-Everett, 2010:277).

However, women did also complain that travelling using the legal route (that is entering South Africa legally) is expensive and unaffordable (Lefko-Everett, 2007: 21; Lefko-Everett, 2010:273). These fees include customs duties. In the past, Zimbabweans also needed visas (an additional fee) to enter South Africa, though this was changed in 2009.

Migrating to South Africa legally does not necessarily imply a smooth ride. Migrants often have to wait in long queues at border posts that sometimes do not have proper sanitation and other facilities. Because of the high costs associated with entering South Africa legally, those that cannot afford to pay opt to enter the country illegally, a dangerous but cheaper option. There are also those that choose to enter the country legally but then overstay their allocated period (Lefko-Everett, 2007: 21; Lefko-Everett, 2010:273). This demonstrates how stricter immigration controls are not always effective in curbing migration; instead, they push people to adopt more illegal approaches to migration, thus making it more difficult for the government to regulate.

Moreover, Zimbabwean migrants (as is the case for migrants from elsewhere in Africa) rarely have a place where they will be received or secured accommodation upon entering South Africa. They usually have the contact number of a relative or
friend that they try to contact once in the country, and the contact will then assist them until they are able to find employment and shelter. Some are left to survive on their own with only advice from other Zimbabweans on where they can seek employment and shelter (Lefko-Everett, 2007:23). Those that find employment as domestic workers are better off. They often have the opportunity to reside at their workplace in a cottage at the back of the main house.

Many female migrants leave their children in the care of their parents, sisters or relatives and send money to the guardians regularly for food and education. The separation between the children and their mother places a lot of stress on the women, but they find comfort in the belief that they are migrating to take care of their families (Dodson, 1998:23). A significant proportion of Zimbabwean women find employment in the domestic service sector. According to Crush et al. (2012) in 2005, 2.4 per cent of Zimbabweans in South Africa worked as domestic workers and by 2010 this figure had grown to 8.4 per cent. This signals an exponential growth in Zimbabwean nationals in this sector. This is partly because migrants from Zimbabwe in particular have narrow parameters of choice, especially since many don’t have the work permit needed to find employment in the formal sector.

Besides the New Dispensation Permit that Zimbabweans could apply for until applications closed on the 31 December 2014, there are only four other types of work permits that they can apply for in South Africa: a quota work permit, a general work permit, an exceptional skills permit and an intra-company transfer work permit. One can only obtain such a permit if it can be proven that there are no South African citizens that can fill those positions. This automatically leaves out women wishing to apply for work permits as domestic workers, therefore rendering them illegal workers in South Africa (Goitom, 2013).

2.5 Conclusion

This chapter consisted of three broad sections that document the history of the migration of Zimbabweans to South Africa and the responses of the South African state to the influx of Zimbabweans. The aim of the chapter was to highlight the unique position Zimbabwean migrants occupy in South Africa.
The first section of the chapter was dedicated to highlighting the three waves of migration from Zimbabwe to South Africa. The first one was in the 1980s by mainly white migrants who migrated because of the perceived threat of an end to white privilege following Zimbabwe’s independence. The second wave took place in the early 1990s when the Zimbabwean economy began to dwindle and during the subsequent implementation of SAPs. The third and most radical wave began in the early 2000s, motivated by both economic and political reasons, i.e. the radical land redistribution programme and the political tensions that followed.

The second section underlined the responses of the South African state to the influx of mainly African migrants post 1994, with exclusionary immigration policies that retained policy aspects of the apartheid regime, including exclusions on the basis of race, class and gender, i.e. the use of exclusionary language such as “him” and the exclusion of “those not in possession of sufficient funds”. It was also indicated how this securitarian approach is likely to push ‘unwanted’ migrants to use clandestine routes to enter South Africa and how their ‘illegal’ status contributes to xenophobic attitudes against African subjects.

The final section discussed the migration of Zimbabwean women to South Africa, placing emphasis on the unique challenges they encounter as a result of both exclusionary immigration laws and the economic burden placed on them by the need to take care of loved ones in Zimbabwe. The next chapter is dedicated to the analytical framework that will guide this study.
CHAPTER 3

ANALYTICAL FRAMEWORK

3.1 Introduction

This study draws its analytical framework from various contributions from scholars such as Cock (1980), Anderson (2000) and Ally (2009) who have written extensively on the subject of domestic workers, while also drawing on the various legal frameworks that regulate domestic work. The first section conceptualises domestic work as an essential building block for the framework guiding this study. It draws attention to the informal and unregulated nature of the sector, and therefore illustrates why exploitation and abuse flourish so easily in such spaces. It also demonstrates why domestic labour is often reserved for migrant women of colour and therefore illustrates that the presence of Zimbabwean domestic workers in South Africa is not exceptional.

Secondly, laws governing domestic work both in South Africa and internationally are explored, along with their contributions towards the transformation of this sector. The section provides a detailed chronological account of the genealogy and the evolution of labour laws to accommodate domestic workers in South Africa, leading up to the adoption of Sectoral Determination 7. It also captures the impact of the extension of various labour laws and international conventions to domestic workers. The study draws from the discourse on domestic workers, its linkages with migrancy and the statutes regulating this sector to create an analytical framework which features in the latter section of this chapter.

Lastly, intersectionality is used as an analytical tool to locate the experiences of Zimbabwean migrant domestic workers. This section reveals the manner in which the compoundment of different inequalities based on class, race, gender and nationality can, in some cases, confine migrant women into a space where they are at the receiving end of low wages and unjust treatment.
3.2 Theorising domestic work

As already mentioned, this section is dedicated to conceptualising domestic work. This serves to highlight important features that are inherent in domestic work, that are generally experienced by women that occupy this line of work across different contexts. In this section, four aspects relating to domestic work will be discussed, which are, namely: domestic work as an extension of a woman’s natural role; the skewed power relations between employers and employees; the link that exists between migrancy, dependence and domestic work; and the vacuum that is often left by a lack of government regulation in this sector. All these themes derive from literature on domestic work by scholars such as Cock (1980), Anderson (2000), Ally (2009), Griffin (2011), Labadie-Jackson, 2008 and others, who have written extensively on domestic work, as will be discussed in the sections below.

Domestic work: an extension of woman’s natural role

Defining domestic work is a challenge, as the tasks involved vary and are sometimes hard to distinguish. For example, domestic workers could perform multiple tasks simultaneously, such as shopping while child-minding, and it is therefore hard to separate exactly what their duties entail. In a study conducted by Anderson (2000: 15), domestic workers were asked what they do, and they simply answered “everything”. Their duties range from performing tasks such as washing dishes to washing the dog. In some instances, they are expected to carry out unreasonable tasks such as cleaning their employers’ workplace or a residence of a relative (also see Griffin, 2011: 89).

Moreover, this line of work has a peculiar nature, because the domestic worker’s workplace is also the employer’s home and private space. Du Preez et al. (2010: 398) maintain that this peculiarity causes fundamental lines to be blurred, the lines between family and work, affection and duty, custom and contract. Consequently, employers conveniently shift between perceiving their domestic workers as real workers to family members, depending on which suits the employer at the time (du Preez et al., 2010:398). According to Anderson (2000), the family member metaphor is only used to mask the real asymmetrical power relations that exist between the employer and domestic worker.
Feminist scholar Labadie-Jackson (2008:68) argues that duties that a domestic worker performs are seen as an extension of her natural role into her workplace, thus contributing to the reason why it is undervalued and perceived as "low-skilled". Therefore, "the gender-based division of labour within the family unit has social and economic implications that surpass the family structure" (Labadie-Jackson, 2008:68). Their labour is often perceived as unproductive labour, although this position has been subject to contestation.

The domestic labour debate dates back to the 1970s when Marxists became critical of the fact that domestic tasks such as cooking, cleaning and caring for children were reserved for women in order to ensure capitalist accumulation. Marxists distinguish between two forms of labour under capitalism: productive and unproductive labour. Productive labour, they argue, is labour that is exchanged for capital, and is therefore said to produce value. Unproductive labour on the other hand, is labour that is exchanged for revenue or wages (Hensman, 2006:3; Jekyll & Hyde, 2000:15).

The debate is premised on the question of whether or not domestic labour can be classified as productive. Those that argue for it point to its significance in society. They maintain that value commodities are transferred through domestic labour into labour power. Perceived this way, one could argue that domestic labour adds value (see Dalla Costa & James, 1972; Seccombe 1973). Their position is that women’s reproductive labour is important in ensuring the reproduction of labour power that the capitalist system desperately needs (Hensman, 2006:3; Ally, 2009:5). However, there are those that oppose this view and see no value in domestic labour (see Benston, 1969; Coulson et al., 1975; Gardiner et al., 1982).

Marxist scholars also made the observation that reproductive roles that women performed were the ‘common difference’ between all women living within a patriarchal and capitalist system (Hensman, 2006:3; Ally, 2009:5). However, a group of scholars in the 1980s that studied paid domestic labour questioned the notion of ‘a common difference’. They found that globally, it was a common feature that white middle class women outsourced their reproductive duties to needy women of colour or migrant women from less developed countries (Ally, 2009:5). This bears testament to the racialised nature of domestic work. It is through this sector that the
structures of inequality (gendered, racial and class inequality) are exposed, reproduced and reinforced (Anderson, 2000:175; Ally, 2009:5; du Preez et al., 2010: 397; Griffin, 2011:85). This phenomenon will be expanded on in the subsequent section on intersectionality.

By outsourcing their reproductive roles, wealthier women spend more time on their productive labour and leisure time. The domestic worker, on the other hand, is so consumed by their work that they barely have time to perform any value-adding activities such as getting an education, and they then stay poor as a result (Ally, 2009:6). The power dynamics between different racial groups and classes (although within the same gender) become apparent in such relationships. In some contexts, having a domestic worker is seen as a status symbol. The domestic worker is perceived as an object that can afford the employer a luxurious lifestyle. However, their call of duty goes beyond simply helping their employers enjoy a luxurious life; they also help them meet their daily needs, thus covering a broad spectrum (Labadie-Jackson, 2008: 70; Gündüz, 2013:34).

Moser & Levy (1986) make a distinction between strategic gender needs and practical gender needs. They define strategic gender needs as “derived from the analysis of women’s subordination and deriving out of this the identification and formulation of an alternative, more equal and satisfactory organisation of society in terms of the structure and nature of relationships between men and women to those which exist at present”. These may include goals to achieve a more gender equitable society and the abolition of gender discrimination among other things. Practical gender needs, on the other hand, “arise from the concrete conditions of women’s positioning by virtue of their gender within the division of labour” – these are responses to immediate practical needs of women and do not challenge the status quo, they operate within existing boundaries of the sexual division of labour (Moser & Levy, 1986:9).

When one adopts this framework to study domestic work, then it can be said that the domestic worker sector caters to a very small degree to the domestic workers’s strategic needs, since it affords them an opportunity to earn a salary. However, the

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8 The concept of practical and strategic gender needs was coined by Maxine Molyneux (1985).
job is in line with traditional sexual division of labour, which perceives care-work as the domain of women and affords them very little opportunities to advance further. Domestic work caters to a larger degree to their practical needs because it is a means through which the employee is able to send her children to school and provide food for her family. However, they are not challenging the prevailing societal regime of gender discrimination.

Once a domestic worker, it becomes very challenging for the women to change occupations or to get promoted to a higher position. This sector does not allow space for skills development or any other sort of endeavour that could potentially add value to the life of the worker (Gündüz, 2013:36). This is because domestic workers often live insolation, performing tasks that are mundane and repetitive for long hours each day. Domestic work in itself is structured in such a way that there is no higher position that a domestic worker can get promoted to. Wages may increase, but the position remains the same.

**Power relations**

Domestic workers are among the least empowered workers globally, working in environments with the most unequal power relations, and work by Cock (1980) and Griffin (2011) captures this. However, Wong (2012:39) advances the idea that more women should begin to look at domestic work as a feminist issue because women cannot be said to be free while others continuously face subjugation working as domestic workers for other women. She quotes Emma Lazarus: “until we are all free, we are none of us free” (Wong, 2012:39).

In order to navigate their workspace, Jacklyn Cock (1980) maintains that domestic workers adopt what she has termed the ‘mask of deference’ to denote a coping mechanism that domestic workers use. As already mentioned in the first chapter, Jacklyn Cock writes about the experiences of predominantly black domestic workers during the apartheid era in South Africa. It is important to note that she writes about a group of women living in an era where there were no labour laws protecting them. There was also an absence of upward mobility opportunities for black people. Their subordination was institutionalised by law and enforced daily in their workplaces and other spaces. Like migrant domestic workers today, black women had to rely heavily
on their employers for the jobs, accommodation and protection (as black people were not allowed into certain spaces unless they worked in those areas).

Cock defines the ‘mask of deference’ as “a protective disguise enabling [domestic workers] to conform to employers’ expectations and shield their real feelings … on the contrary, they have a high consciousness of exploitation; a sense of community of interests; and a considerable insight into the structures which maintain their subordination” (Cock, 1980:8). Although Cock was writing about the experiences of South African domestic workers during the apartheid era, it is interesting to note the stark similarities between their experiences then and the experiences of migrant domestic workers today.

She makes the argument that domestic workers are powerless: they are not empowered to express their dissatisfaction in their workplace (Cock, 1980:103). Their silence and deference is perceived to mean the acceptance of their own subordinate position in the social order because there are no signs that suggest they could be resisting the status quo (Cock, 1980:104). However, although veiled, Cock (1980:104) argues that domestic workers do not accept the legitimacy of their subordination – in essence they reject it. The challenge then becomes that they are trapped and have to depend on the existing structures for survival. Deference is then adopted as a coping strategy, while in reality it is dependence that keeps them trapped in their subordinate positions instead of acceptance.

Migrancy, dependence and domestic work

Griffin (2011) introduces a different and yet vital aspect to the analysis of the lived experiences of domestic workers within the South African context, an aspect of “migrant illegality”. As already mentioned in Chapter 1, today’s globalised world has necessitated that increasing numbers of people leave their countries of origin to work in foreign countries. A large proportion of migrant domestic workers also happen to be undocumented, and the few that manage to acquire legal status often do so with the help of their employers. This transaction, from the outset, already creates an imbalanced relationship between the worker and employer, where the former has to heavily depend on the latter for their survival in the host country (Anderson, 2000:175). The relationships between workers and their employers are no longer solely shaped by the intersection of race, language and ethnicity as had been previously
argued; additional contributors include class and citizenship status (nationality) (Griffin, 2011:85).

Undocumented migrants tend to have the worst experiences in host countries. Their status of “illegality” exposes them to increased vulnerability to abuse and exploitation. In some cases, they cannot even access essential services such as healthcare, education or police services. Abused migrants that seek state recourse are more likely to end up in prison than the perpetrator because of their status of “illegality” (Anderson, 2000:176). Moreover, the fear of deportation makes them too insecure to interact with other people (including the authorities) because of fear to being identified (Anderson, 2000:176; du Preez et al., 2010:397). Although domestic workers are generally vulnerable because of the nature of their work, class and identity, which is often afforded lower status, migrant domestic workers occupy an even lower social standing and are therefore worse off than local domestic workers.

Migrant domestic workers have been known to be on the receiving end of some of the most blatant human rights abuses. For instance, some have lost their jobs because they were pregnant. This increased susceptibility to abuse is a result of their employer’s direct control over their lives; the domestic workers’ stay in the host country is often dependent on the employer. Although it is illegal for employers to employ an undocumented migrant, it is often the worker that ends up paying the price of deportation should they get caught, and not the employer (Anderson, 2000:179; Ally, 2009:6).

In some cases, domestic workers manage to get permits but the permits then bind them to one employer, making it difficult for them to leave their jobs if dissatisfied. In other countries, power is so concentrated in the hands of the employer that they apply for a permit on behalf of their domestic worker, and they also hold the power not to renew the permit and dismiss the domestic worker at their discretion. In such cases, the domestic worker will be immediately deported to their home country. This dependency maintains asymmetrical power relationships between workers and employers (Anderson, 2000:176).

In a study conducted on Basotho women working in South Africa as domestic workers, Griffin found that employers tend to prefer hiring migrant domestic workers as opposed to their South African counterparts. Migrants are often perceived to be
more submissive and hardworking than South Africans. This statement is not entirely untrue; migrants do tend to work harder than locals because of their increased fear of dismissal and deportation and constant desire to impress their employer to stay employed, and consequently remain in South Africa. It is often better for them to cooperate with their employer than to go against authority and risk dismissal (Griffin, 2011:85).

However, it is important to note that exploitation and abuse are not exclusive to migrants but to local domestic workers too (see Ally, 2009). The difference is that ‘migrancy’ status makes them more vulnerable to this type of treatment. Bastia (2014) argues that “given that migrants cross multiple boundaries – ethnic, racial, class, gender – it is not surprising that migrant women are fast becoming the new quintessential intersectional subjects”9 (Bastia, 2014:238).

Regulation vacuum

The domestic labour sector, like many other informal sectors that are outside of government regulation, is plagued by low wages and an array of other exploitative practices. A number of scholars that have written on domestic work document extensively the manner in which domestic workers are subject to a number of violations such as low wages, restricted freedom of movement and isolation, as well as psychological, physical and even sexual abuse perpetrated by their employers (Anderson, 2000; Labadie-Jackson, 2008; Hua & Ray, 2010).

Hua & Ray (2010) reiterate this point by arguing that domestic labour is just as precarious as human trafficking and sex slavery. They point to the fact that domestic workers sometimes suffer sexual violence and abuse in their workplace. Apart from that, there are other routinised dangers involved in the everyday work life of a domestic worker, dangers such as exposure to dangerous chemicals, unsafe working conditions, chronic pain and injury, undernourishment, sleep deprivation, isolation and loneliness. All these factors cause domestic workers both physical and mental harm (Hua & Ray, 2010:257; Gündüz, 2013:36).

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9 The title of this dissertation is borrowed from this quote by Bastia (2014).
More often than not, governments both at domestic/national and international level do not do enough to protect migrant domestic workers. Often, the laws which are put in place explicitly exclude migrant domestic workers from labour protections. This puts the workers in a disadvantaged position wherein they are isolated not only from society, but also from official structures where they could have otherwise sought state recourse in the case of disputes, exploitation and abuse (Labadie-Jackson, 2008:85).

Given the problems that have plagued the domestic labour sector (as mentioned above), the South African government has made important strides towards ensuring that the rights of domestic workers as workers and humans are protected, as will be discussed below. However, it is important to note that these protections fail to explicitly recognise migrant domestic workers.

### 3.3 Legislative framework: the South African domestic sector

Before discussing the current laws governing the domestic labour sector, this section starts with a brief background of the legal status of domestic workers before 1994. The South African domestic labour sector has historically been a site of minimal government regulation and serious labour and human rights violations against black women. It is also the single largest employer of black women since the arrival of Europeans in South Africa and remains so. According to the South African Institute of Race Relations, there were 787 000 black women working as domestic workers in South Africa in 2013, accounting for 87.9 per cent of the total figure. Coloured women accounted for 6.8 per cent, while Indian women made up 0.3 per cent of the total figure. White women accounted for 0.2 per cent (2000) women working as domestic workers (South Africa Survey, 2013:252).

Furthermore, the environment in which domestic workers labour is isolated, away from government supervision and societal condemnation. Government statutory regulation in this sector is a fairly new phenomenon. Many statutes that are key to healthy employment relationships between employees and employers often excluded domestic workers. An example of this is the Workmen's Compensation Act 30 of 1941. This Act served to protect workers in the event that an accident occurs in
the workplace, which in some instances results in disablement. Moreover, this Act protected the rights of workers to access free medical care and compensation for loss of wages. The Workmen’s Compensation Act 30 of 1941 was later repealed and replaced by the Compensation for Occupational Injuries and Disease Act 130 of 1993 (Delport, 1992:184).

Domestic workers were also excluded from the Basic Conditions of Employment Act 3 of 1983. The justification for this exclusion was that domestic workers cannot be considered as workers, since they work in private households. They were perceived to be more like family members of the families they worked for. This perception can be seen as the reason why domestic workers were also excluded from additional statutes such as the Labour Relations Act of 1956, the Wage Act 5 of 1957 and the Unemployment Insurance Act 30 of 1966 (Delport, 1992:186). All the above mentioned laws were repealed and replaced after 1994.

However, Delport (1992:186) maintains that there are other labour laws which could have been said to be inclusive of domestic workers, although it did not explicitly refer to domestic workers. One such Act is the Machinery and Occupational Safety Act 6 of 1983, which was later repealed and replaced by the Occupational Health and Safety Act 85 of 1993. However, this law was preceded by the Factories, Machinery and Building Work Act 22 of 1941, which automatically disqualified domestic workers by virtue of them not being factory workers. The Machinery and Occupational Safety Act protected the health and safety of all workers that use machinery. The Act also served to regulate occupational hygiene in general (Delport, 1992:186).

The Manpower Training Act of 56 of 1981, which promoted and regulated the training of employees, could also be extended to domestic workers. The right of workers to unionise without victimisation by the employer was also secured by this Act (Delport, 1992:186). Lastly, the Guidance and Placement Act 62 of 1981, which provided for the establishment of guidance and placements centres, covered domestic workers too. This Act provided for the establishment of registration and the regulation of private employment offices. However, it is important to note that while some of these laws could be ‘extended’ to domestic workers theoretically, in practice they hardly applied. Both the abovementioned laws were later repealed and replaced by the Amended Skills Development Act of 2003.
For a significant period during the apartheid era and briefly post-apartheid, domestic workers had to rely on Common Law for labour protections in the absence of adequate statutory provisions. Fortunately, Common Law does not adequately protect workers, thus leaving domestic workers in a vulnerable position. For instance, under Common Law, employers are not obligated to pay their employees when they are on sick leave. Employees are also not entitled to paid vacation leave (Delport, 1992:191). Furthermore, working hours or minimum wage standards are not set, nor regulated, in terms of Common law; discretion is given to the employer, which re-emphasises the hegemonic position of the employer in these employment relationships. Should the employee wish to leave the job or should their employment be terminated, the employer is not obliged to give the employee any references. The employer is also not obliged to give the employee notice upon dismissal, nor do they need to offer a written explanation or justification for their actions. Upon dismissal, live-in domestic workers are required to leave the property of the employer immediately, otherwise the employer may sue for eviction (Delport, 1992:192).

In 1984, an investigation was undertaken by the National Manpower Commission. The aim of the investigation was to explore possible statutory measures to regulate the conditions of employment of domestic and farm workers. The need for domestic workers to be included in statutes such as the Basic Conditions of Employment Act (BCEA), Labour Relations Act, Workmen’s Compensation Act and Unemployment Insurance Act was noted. The National Manpower Commission, however, believed that the exclusion of domestic workers from the Wage Act 5 of 1957 was justified and therefore did not call for reform (Delport, 1992:193; Grant, 1997: 61; du Toit, 2010: 10). The report of the NMC investigation was never published.

In September 1990, in light of a changing South African environment both politically and economically, SACCOLA, COSATU, NACTU and the then Minister of Manpower signed an agreement called the Labour Minute, which was aimed at improving labour relations between employers and workers. As a result of this process, it was recommended that domestic workers be included in the Labour Relations Act, BCEA, Unemployment Insurance Act and the Wage Act. It was also proposed that a code of conduct be set up for domestic workers (Delport, 1992:193).
In 1994, domestic workers were eventually included in the BCEA and shortly thereafter the Labour Relations Act 66 of 1995. However, they remained excluded from the Unemployment Insurance Act. The BCEA was designed for large-scale employment and is not always fitting for domestic workers. The domestic labour sector needed specialised legislation due to the particular nature of the work environment of domestic workers. However, extending the BCEA and the Labour Relations Act to the domestic labour sector modestly improved the position and working of domestic workers. In this regard Fish (2006) indicates that out of 75 participants that took part in her study, only three domestic workers had written contracts in their workplace after the BCEA and Labour Relations Act were extended to domestic workers. An additional obstacle is that the Basic Conditions of Employment Act only covers full-time workers; this meant that domestic workers that are considered to be hired on a part-time basis are automatically excluded from its protections, even though some so-called ‘part-time’ workers worked over 50 hours a week (Fish, 2006:116).

Brown and Reynolds (1994:76) note the extension of the BCEA to domestic workers has resulted in domestic workers on average receiving 2.3 weeks of leave, often during a time when their employers go on vacation. Furthermore, domestic workers can enjoy 10-12 days sick leave per year. However, Brown and Reynolds (1994:79) found that domestic workers often opted to have their friends or relatives fill in for them on days when they are sick.

Although the Labour Relations Act protects the right of workers from unfair dismissal, in practice, domestic workers still do not enjoy adequate job security and always live in fear of dismissal. The BCEA also protects the right to three months maternity leave. However, the Act is not explicit on whether or not employees are obliged to take back their workers once the maternity leave period ends. Moreover, the Act does not obligate employers to pay their workers while on maternity leave (Brown & Reynolds, 1994:76; Grant, 1997: 61; du Toit, 2010:10).

A tangible turn of events came about with the adoption of the BCEA Act 75 of 1997, Sectoral Determination 7 of the Domestic Worker Sector (Sectoral Determination 7 hereafter). Sectoral Determination 7 is part of the BCEA Act 75 of 1997, and it is an
extension made to cater exclusively for domestic workers. It is also the first of its kind in the history of South Africa.

The process leading up to the approval of this law was very rigorous, with 64 public hearings, 114 written presentations and two surveys covering more than 300 employers and 4000 domestic workers (du Toit, 2010:11). This law has also put South Africa on the map as one of the most progressive countries in terms of protecting the labour rights of domestic workers.

The Sectoral Determination 7 sets out various requirements, criteria and standards that employers have to abide by. To begin with, there is a minimum wage which domestic workers are entitled to. The minimum wage determined is based on two criteria, the first one is the area in which the domestic worker is employed (metropolitan or rural) and the second one is the number of hours they work each week. For the period of 1 December 2014 – 30 November 2015, domestic workers that work for more than 27 hours per week in metropolitan areas are supposed to earn no less than R2 065.47 per month according to the law. Furthermore, those that work for the same number of hours, but in rural areas must earn no less than R1 812.57 per month. The ones that work for less than 27 hours per week in metropolitan areas must earn no less than R1 450.33 per month and those that work the same amount of hours in rural areas must earn no less than 1 284.09 per month (Department of Labour, 2015).

Moreover, domestic workers may only lawfully work a maximum of 45 ordinary hours each week and nine hours each day, provided they only work five days a week. If they work for more than five days a week, then they can only lawfully work a maximum of eight hours in a day. Domestic workers that work extra hours are entitled to overtime payment (Department of Labour, 2015). Sectoral Determination 7 in clause 12 (1) stipulates that “an employer must pay a domestic worker at least one and one-half times the domestic worker’s wage for overtime”.

The law also makes provision for live-in domestic help. Employers can only deduct up to 10 per cent of the domestic worker’s salary or monthly wage for accommodation (no other deductions can be made outside of this, except for UIF). In addition to this, their accommodation needs to meet certain standards. For instance, their quarters have to be weatherproof, have at least one window, a door that can be
locked, a bath/shower and a toilet. Workers are also required to register their domestic workers (only those that work more than 24 hours a month) for the Unemployment Insurance Fund (UIF). They are also expected to pay 1 per cent of the domestic worker’s salary towards this fund each month (Department of Labour, 2013).

Although the Sectoral Determination 7 was specifically drafted for domestic workers, it is not entirely appropriate for the nature of the work domestic workers do. Regrettably, the provisions made in the Sectoral Determination 7 bare stark similarities to those found in generic labour statutes, regardless of the fact that domestic work is ‘work like no other’. However, there are a few exceptions to this statement. For instance, domestic workers, according to the Act, are expected to be on standby between 20:00 and 06:00 for instances when they are needed by their employers, subject to their consent. Moreover, domestic workers are entitled to five days’ paid family responsibility leave instead of three (du Toit, 2010:11).

While some proponents of the Sectoral Determination 7 hail it as the saviour of domestic workers, sceptics argue that in practice, the situation of domestic workers is yet to improve to satisfactory levels. For instance, in a study undertaken by du Toit (2010), she found that many employers claim that they had not been aware of the new regulations and therefore did not implement them. Domestic workers were still working without written contracts, without being issued payslips and still not given adequate notice upon their employment being terminated. On a more positive note, it was found that domestic worker’s nominal wages had risen by 23 per cent within the first year of implementing the Sectoral Determination 7 (du Toit, 2010:17).

The second key legislation is The South African Constitution Act 108 of 1996 (the Constitution), which is the supreme law of the land. According to Section 23 (1) of the Constitution, “Everyone has the right to fair labour practices”, and this emphasises the importance of employers treating all their employees with fairness, regardless of the type of occupation or their nationality. Furthermore, Section 10 states, “Everyone has inherent dignity and the right to have their dignity respected” (The South African Constitution Act 108 of 1996). These provisions do not implicitly nor explicitly exclude migrant workers, leaving its applicability to migrants subject to interpretation.
The drawback with the aforementioned statutes is that they fail to reach undocumented migrants; they are neither expressly included nor excluded in the provisions as already mentioned. Nevertheless, Griffin (2011:6) indicates that since 2008, the Commission for Conciliation, Mediation and Arbitration (CCMA) has expressly extended its services (labour dispute settlements) to illegal migrants also. Evidence of this is found in the case of *Discovery Health Limited vs Commission for Conciliation, Mediation and Arbitration and Others*, when the court ruled that undocumented migrant workers are also entitled to fair labour practices in line with the Constitution, which protects the rights of all workers within South Africa. The rationale behind this ruling was that

Unscrupulous employers might be willing ... to employ foreigners without work permits, then at the end of the contract period refuse to pay them on the basis that the contract was void. Such foreigners would then be without remedy. This would undermine the constitutional guarantee of everybody to fair labour practices. The Court accordingly held that the contract between the applicant and the third respondent was valid.

This ruling represents a milestone reached, in the movement towards protecting the rights of all workers within South Africa, regardless of their nationality and migrant status.

### 3.4 International statutes

Apart from governments regulating labour issues internally within their respective countries, there are international bodies that also exert pressure on governments to protect the labour rights of domestic workers within their borders. Examples of such bodies are the International Labour Organisation (ILO) and the United Nations (UN).

The ILO has played a key role in advocating for labour rights of domestic workers to be placed on the international law agenda. The ILO sought to set international standards that would protect domestic workers, the most marginalised group of workers, who embody the intersection of race, nationality and gender (Blackett, 2014: 250). The organisation adopted the first resolution in 1948, which called for a change in the working conditions of domestic workers globally. A second resolution was adopted by the ILO in 1965, which sought to restore the self-respect and human dignity of domestic workers.
An addition to abovementioned is the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Migrant Workers Convention hereafter). This was adopted by the UN General Assembly on 18 December 1990 and entered into force on 1 July 2003. While domestic workers in general may face hardships because of the nature of their work, some difficulties are unique to migrant domestic workers due to their migrant status.

The Migrant Workers Convention seeks to achieve a few things regarding the treatment of migrant workers internationally. It includes, among other things, pushing for the equal treatment of migrants and nationals in the workplace. Secondly, the Convention seeks to advocate for the improvement of the substandard living and working conditions of migrant workers. Provisions for the protection of rights and freedoms such as freedom of thought, freedom of expression, freedom of religion and the right to legal equality (among other things) are also made in this Convention. However, South Africa is not signatory to this convention and is therefore not bound by it. For the purposes of this study, focus will be on Convention 189 of 2011, which is binding to South Africa as a signatory state.

During an ILO Governing Body meeting that took place during March 2008, the South African government played a key role in supporting a movement towards setting international measures and instruments that would regulate the domestic worker sector. It was at the forefront of this undertaking because of improvements in its domestic policies, which had shifted towards protecting domestic workers. This set a precedent for the international community to do the same (Blackett, 2014:250).

From the outset, the ILO has been aware of and sensitive to the sector’s atypical nature to ensure effective transformation. They noted that while domestic work is ‘work like any other’ it is also ‘work like no other’. In 2011 Convention 189 of 2011 titled “Decent Work for Domestic Workers” (Domestic Workers Convention) was adopted and entered into force on 5 September 2013. It remains, to date, the principal international statute governing domestic work. South Africa is a signatory to this convention and has also ratified it. The Domestic Workers Convention problematised issues such as “working hours, overtime pay, the calculation and payment of wages, and the provision of annual leave with pay” (Blackett, 2014:251).
The Domestic Workers Convention also extends its protections to migrant domestic workers, noting that migrant domestic workers, like ordinary domestic workers, deserve equal protection against abuse and exploitation of any form. Article 8 and Article 15 of the Convention call on member states to regulate the working conditions and terms and conditions of the employment of migrant domestic workers. Furthermore, Section 4 of the Domestic Workers Convention stipulates that “each member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited”.

The challenge is the South African government seems to have turned a blind eye to the presence of undocumented migrant domestic workers within the country. They have chosen to ignore the fact that this group of workers exists, and chose to rather deal with all migrant workers under the ambit of legal or illegal, where legal migrant workers are tolerated and illegal migrant workers are unwanted. Unfortunately, attributable to stringent South African migration laws, domestic work does not fall within different fields under which people can apply for a work permit; this renders all migrant domestic workers in South Africa ‘illegal’.

**Summary of dominant themes emerging**

As demonstrated in the literature and legal frameworks discussed above, three dominant themes arise in the discourse around migrant domestic workers globally. These three broad themes represent what feminist scholars and activists argue press for the need for change to improve the lives and work experiences of domestic workers. The first theme focuses on issues around working conditions. Under this theme, feminist scholars and activists alike argue that there is a fundamental need for government to regulate working hours, and set standards for minimum wages to circumvent the exploitation of domestic workers. Scholars such as Cock (1980) and Anderson (2000) document how domestic workers are easily exploited in the absence of laws that regulate maximum working hours and minimum wages.

The second theme focuses on issues around the health and safety of domestic workers. Under this theme, it is argued that not only should the work environment of
the domestic workers be safe, but that employers should also afford their employees an opportunity to take care of other aspects of their health, such as their reproductive health (Anderson, 2002; Ally, 2009; Griffin, 2011). For example, domestic workers, like other workers, should also be entitled to maternity leave that is accompanied by maternity benefits.

The focal point of the last theme is the ill treatment of domestic workers by employers. Scholars note that not only have domestic workers been subject to abusive treatment by their employers, whether it be physical or emotional abuse, but they have been restricted in terms of getting access to institutions that can mediate and resolve disputes between the parties. The argument is that governments need to put in place measures and instruments that afford migrant domestic workers an opportunity to have their grievances heard by the relevant authorities (Budlender, 2010; International Labour Organisation, 2015).

Given the requirements discussed above in terms of the Sectoral Determination 7 and international conventions to which South Africa is a signatory, the aspects below formed part of the information required from the interviewees. In terms of working conditions, the paper focuses on the following aspects:

- Presence of formalised contracts of employment;
- Whether employers are meeting minimum wages;
- Access to adequate leave (including family responsibility, sick, maternity and vacation leave);
- Number of working hours;
- Payments for overtime work;
- Presence of a job description; and
- Access to worker benefits (UIF, pension fund, cover for occupational injury).

The health and safety requirements of the interviewees were established in terms of the following aspects:

- Presence of occupational safety measures (face masks, gloves);
- Access to hospital care;
• Presence of dangerous work tasks; and
• Presence of any form of vulnerability to abuse at the workplace and outside of
the workplace (physical or emotional).

In terms of rights, freedoms and security, the respondents were interviewed on the
following aspects:
• Presence of racism, sexism, xenophobia or any other form of discrimination in
and outside of the workplace;
• Presence of respect between employers and employees;
• Presence of respect for human and labour rights of the domestic worker;
• Presence of insecurities (job insecurity, insecurity of being deported);
• Presence of opportunities to air grievances with employer;
• Access to state institutions during cases of abuse or labour disputes; and
• Presence of opportunities to meet women’s strategic and practical needs.

In the third part of the analytical framework, intersectionality is used to examine the
multidimensionality of the human experience, and in this regard, particularly the
experiences of migrant domestic workers. The section below is dedicated to
conceptualising intersectionality and explains how one’s identity and social standing
correlates to shaping their lived experiences.

### 3.5 Intersectionality

Intersectionality is an analytical tool used to understand how the different variables of
identity come together to create a unique lived experience for the subject. Bastia
(2014:237) describes it as a compoundment of different inequalities based on class,
race, gender and other identities. She argues that if not addressed, these
inequalities then persist (Ramsay, 2013:456). According to Collins and Chepp
(2013:15), intersectionality consists of a collection of ideas and practices such as
gender, race, class, ethnicity, nationality and citizenship status that cannot be
understood in isolation from another. “Instead, these constructs signal intersecting
constellation of power relationships that produce unequal material realities and
distinctive social experiences for individuals and groups positioned within them” (also
This methodological paradigm emerged out of a pressing need for African American women to find a suitable platform to voice their concerns. Although it is widely accepted that it was coined by Kimberle Crenshaw (1991), it has its roots in the black feminist movement in the United States of America in the twentieth century. Various scholars such as Gopaldas (2013), Crenshaw (1989) and Cho (2013) point to the discontentment and isolation black women suffered at the time. African American women occupied a grey area because the most powerful movements of that period (the feminist movement and the civil rights movement) were not accommodative of their concerns.

The feminist movement was dominated by white women who advanced their interests to the exclusion of black women. On the other hand, the dominant group in the civil rights movement was patriarchal black men who advanced their agenda and left black women out (Gopaldas, 2013; Crenshaw, 1989; Cho, 2013). It was evident that because of their identity, black women were automatically in an isolated and disadvantaged position, and in one that is different from that of black men and white women.

Consequently, the black feminist movement was born, which sought to advocate for black women’s rights (Gopaldas, 2013:90). The exclusion of black women in these key movements of liberation became a key catalyst for the emergence of intersectionality. In this regard, as Cho argues, “The theory did not go out there looking for subjects; it responded to their existing formation in multiple sites of power and marginalisation” (Cho, 2013:387). Ryle (2012) examines two models of intersectionality, the mathematical model and the interlocking identities model, also known as multiple-consciousness.

Mathematical model

The mathematical model has two subcategories, namely the additive model and the multiplicative model. In terms of the additive model, “various forms of oppression can be added together to form a sense of what multiple forms of oppression mean”. A good example is a case of a black woman that experiences oppression because of
her identity as a black person and also faces oppression because of her gender. In terms of the model, this woman would be described as experiencing double oppression. A black lesbian woman, on the other hand, could experience a triple oppression at the same time (Ryle, 2012:52).

The multiplicative model, on the other hand, is more complex than the additive model. Nonetheless, it is premised on the idea that “the combination of two negative identities for black professional women (being black and being a woman) results in an overall positive status…” (Epstein, 1973). This view has come under criticism by different scholars (see Zinn et al., 1986), who maintain that nothing positive results from two ‘negative’ identities intersecting. The person will often be subjected to marginalisation and domination.

Collins (1990) criticises the mathematical model for its dichotomies and opposites: one is either black or white, gay or straight, and never both at the same time. The real issue surfaces when one has to explain the position of an individual who is both the oppressor and privileged. For instance, a black Zimbabwean man living in South Africa may be in a position of privilege because of his gender, but could also be oppressed as a result of his ethnicity and race.

This proves that an individual can possess multiple identities simultaneously that work both ways (Ryle, 2012:54). Lastly, the model is premised on placing an order or ranking to one’s identity, with questions like: who is the most oppressed - women or gays? Is one more oppressed as a black person or as a woman? This poses a challenge because one cannot separate these into different components in order to determine which identity component is the most oppressed or privileged.

**Interlocking model**

The interlocking model is premised on the idea that there is no one system of oppression that is more important or of a higher rank than another. People can experience their gender, race, ethnicity, class and sexuality simultaneously. The intersection of all these identities is what brings unique experiences to each person. One cannot say that they are more oppressed because of their race or gender because all these identities work together simultaneously to produce privilege in some instances and oppression in others (Ryle, 2012:54; Gopaldas, 2013:91).
Moreover, in terms of the interlocking model, one identity needs the others in order to function, and that is why one cannot separate identities and consider them individually. For instance,

The idea of a housewife had important gender implications but it was also a tool used to enforce class and racial differences, as poor women and women of colour were rarely able to choose not to work outside the home and be housewives in the way upper class, white women were (Ryle, 2012: 55).

The interlocking model excludes an either/or type of thinking, since each identity is equally involved in the creation of unique lived experiences for each individual. One can be in a position of both oppression and privilege simultaneously. This study is guided by the interlocking model of intersectionality in depicting the different intersecting identities which create unique experiences for domestic workers from Zimbabwe.

Domestic workers generally encounter various challenges (to different degrees) in their line of work. This is often attributable to their gender, class and race. Moreover, as already discussed earlier, nationality has also become a contributor to an already volatile situation. Therefore, this paradigm will aid in establishing the position of Zimbabwean domestic workers in South Africa - is it a position of privilege, of oppression, or a combination of both? Put differently, this study seeks to examine how gender, race, class and nationality shape the lived experiences of migrant domestic workers from Zimbabwe in South Africa.

Intersectionality compels one to deal with the experience of each individual differently, taking into account the subjects’ race, gender, class, nationality among other factors. However, as much as it is a breakthrough that each individual has an ‘intersectional experience’, there is a dilemma inherent in intersectionality which poses a shortcoming. For instance, Rectenwald (2013) argues that with intersectionality, “the divisions of identity are potentially endless” (Rectenwald, 2013). He criticises the approach for claiming to be collective when in reality it is rather individualistic if each and every member of society has a unique intersectional experience.

Intersectionality has also been criticised for being preoccupied with issues pertaining only to race and gender, particularly black feminism. Cho cites Eskridge, who argues
that “by focusing on the particularities of black women's experience, intersectionality [is] guilty of pushing to its margins issues of class, religion and able-bodiedness” (Cho, 2013:389). Cho offers a compelling counter argument against this critique. She argues that “whatever hierarchy is produced by placing women of colour at the centre or using black women as the point departure is similarly reproduced by focusing instead on gay men of colour as the new centre” (Cho, 2013:390).

One could therefore argue that it is not so much that the approach neglects the aforementioned issues, but rather, the need for scholars to expand the application of the approach to include more issues. As mentioned, this study, for instance, uses intersectionality as a tool to unpack how gender, race, class and nationality shape the lived experiences of Zimbabwean migrant domestic workers in South Africa; therefore expanding intersectionality beyond the scope of just race and gender. This theory can for that reason be applied to any subject.

Intersectionality is premised on the idea that “anti-discrimination frameworks that cannot account for differences in identities and experiences will systematically misapprehend the complexity of individuals’ varied experiences of discrimination and subordination, and will therefore fail to provide adequate redress” (Satterthwaitte, 2005:3). For instance, the experience of a black South African domestic worker may therefore be different to that of a black Zimbabwean domestic worker – their identities (one as a citizen and the other as a migrant, for example) contribute to the shaping of their experience.

As mentioned in Chapter 1, the subject of this study is a Zimbabwean migrant domestic worker that works within the Johannesburg area. Its aim is to establish how the different components of her identity (black, migrant, female and domestic worker) intersect to produce privilege and/or oppression.

### 3.6 Conclusions

The study is guided by three analytical frameworks. The first framework is drawn from the literature on migrant domestic workers, which highlights the challenges that migrant domestic workers experience. Literature on the experiences of migrant domestic workers brings to the fore four dominant themes: the racialisation and
sexist nature of domestic work; the presence of asymmetrical power relations between employers and employees; the standardisation of abuse and exploitation of domestic workers; and the absence of government regulation.

The second aspect of the analytical framework was legislation pertaining to domestic workers alongside the South African Constitution Act 108 of 1996. This included aspects concerning their working conditions (e.g. minimum wages, adequate leave, working hours and job descriptions); health and safety requirements (occupational safety requirements and access to hospital care); and lastly, freedoms and security (the presence of racism, sexism, xenophobia or any other form of discrimination in and outside of the workplace against the Zimbabwean domestic workers.

Lastly, intersectionality was used as a methodological paradigm that aided in establishing how different variables of one’s identity (i.e. gender, race, and nationality) intersect in creating unique lived experiences for the Zimbabwean domestic workers. The next chapter is dedicated to discussing the findings of this study. It mainly covers working conditions and matters pertaining to the health and occupational safety of the respondents.
CHAPTER 4

COMPLIANCE WITH LABOUR LAWS

4.1 Introduction

The aim of this chapter is to establish the adherence to labour laws such as Sectoral Determination 7 and the Unemployment Insurance Act by employers of Zimbabwean domestic workers. Therefore, this chapter (as well as the following chapter) relies heavily on the interviews that have been conducted with migrant domestic workers. It particularly focuses on the requirements set out by the South African labour laws pertaining to domestic workers as discussed in the previous chapter and whether the employers of Zimbabwean domestic workers adhere to the statutes. The key statute, which is the Sectoral Determination 7 (as already mentioned), regulates matters pertaining to wages, particulars of employment such as contracts and job descriptions, hours of work and leave matters, among other things.

The first section establishes the status (in terms of legality or illegality) of the respondents; as has been mentioned in the first chapter, this aspect has a bearing on shaping the lived experience of a migrant worker both in and outside their place of work. The chapter provides a breakdown of the different methods of entry that the respondents employed to enter the country and discusses the different methods the respondents used to regularise their stay in South Africa.

More pertinently, this is followed by an analysis of the data gathered on the working conditions of Zimbabwean migrant domestic workers in Johannesburg in terms of the requirements set out in the Sectoral Determination 7. The first subject of discussion pertains to the registration of migrant domestic workers with the Department of Labour by employers as stipulated in labour laws. Secondly, the chapter explores whether employers adhere to other aspects of labour legislation (Sectoral Determination 7) such as the drafting of contracts and job descriptions for their workers and other key aspects of the benefits that workers should enjoy. Examples of these include sick leave, maternity leave and annual vacation leave for the stipulated period in terms of the Sectoral Determination 7. Further sections are
devoted to discussing working hours, overtime, remuneration in terms of Section 4 of the Sectoral Determination 7 and access to conflict resolution mechanisms such as the Commission of Conflict Mediation and Arbitration (see Chapters 1 and 3).

4.2 Legal status of respondents

As mentioned in the first chapter, 20 Zimbabwean women were interviewed who currently work in South Africa as domestic workers. Firstly, in order to establish their status of legality or illegality, their reasons for migrating to South Africa (i.e. the pull and push factors) were determined in order to ascertain and contextualise any sense of urgency. This was based on the assumption that the migrants with a more pressing need to migrate may be willing to migrate illegally (if need be) to realise their goal and may also be more prepared/willing to work for a low salary and under less favourable working conditions.

4.2.1 Reasons for migrating

The respondents cited multiple reasons for migrating to South Africa. Their reasons covered issues such as the economic meltdown in Zimbabwe, lack of jobs, family reunification, political instability and perceptions of abundant wealth in South Africa which will be discussed in greater depth in the subsequent chapter. Still, the economic situation in Zimbabwe seemed to be a key propellant in comparison to other factors influencing the respondents to migrate, with 13 of the respondents citing it is a reason. Three of the respondents cited political instability and violence as reasons, while one left for the prospect of improved medical care since she is suffering from a condition that medical doctors in Zimbabwe have been unable to diagnose. As her condition worsened, she decided to come to South Africa. She was able to receive medical assistance in South Africa and decided to remain in the country for regular check-ups.

The remaining three respondents migrated to South Africa to reunite with their husbands who were already in the country. However, it seems as though migrants that already have family members in South Africa are more likely to migrate than those without any family members already in the country. Of the 20 respondents, 14
had a relative or family member present in South Africa before they migrated. These relatives made the arrangements for them on arrival and also assisted them in finding their first jobs.

One of the three respondents that migrated to reunite with their husbands mentioned that she had no plans of migrating to South Africa on a permanent basis. Her husband had been working in South Africa and she also had a decent job in Zimbabwe working for the government. According to her:

I was responsible for giving coupons for petrol and other things ... I had the power to give the go ahead for cars that come in [that] need to be given coupons, and if I don’t see fit, I had the power to refuse. I could even deny ministers access if the need arose ... I don’t want to lie I regret coming here. What happened was ... our government changed ... So it affected all the government workers. Some of them, even teachers did not go to work. So when I came here, when I was about to go home my mother told me not to come back because [she] saw [my] friend there they said they are looking for [me] ... When I gave them my number, [our HR] are telling me things have gone so bad, we have your package. So what do you choose? So my husband just told me to take the package so I told my mother to go and get it for me ... we were also into politics and it was about who is who. Now people would go and report you that you were supporting this and that. So I decided not to go back home because we were also being hunted because of that. It became a risk. And my mother was so proud that I am out of [Zimbabwe]. I made it out on time because some of my colleagues got arrested and they were not given that package. So I was just sitting here doing nothing ... so the only job you can get is if someone says come and clean for me ... This thing came as a new thing to me, and now I had to go into this field. Changing fields was very difficult for me (domestic worker from Rosettenville, interview, 24/06/2015).

This is an example of a woman that is educated and trained. She had to leave her former life behind and make major adjustments to work in South Africa as a domestic worker.

Some of the respondents mentioned more than one reason. For instance, two younger respondents also mentioned protracted strikes by educators as a contributor to their decision to migrate. The strikes disrupted their schooling and they sought
work to keep themselves busy and to start helping their families financially. In the words of some of the respondents:

Back home, the teachers went on strike a lot so we did not get taught at school … my sister sent me money from South Africa to come and try find employment so I decided to come. I came to South Africa at 18 years (domestic worker 1 from Krugersdorp, interview, 27/06/2015).

My mom died when I was 17 and my dad also passed away, I did not have parents and I have siblings. There was no one to feed us (domestic worker 2 from Montgomery Park, interview, 06/07/2015).

I came to look for a better life in South Africa (domestic worker from Cosmo City, interview, 07/07/2015).

The above discussion illustrates that the reasons for migrating to South Africa played a determining role in the risks migrants were prepared to take to live and work in South Africa, whether legally or illegally.

4.2.2 Methods of entry

As mentioned above, the respondents interviewed have different reasons for migrating. While some migrated to South Africa purely to seek better job opportunities, some merely wanted to reunite with their husbands. Therefore, there are different methods that the respondents used to regularise their stay in South Africa. Only six of the respondents working in the country are in possession of a work permit. An additional three of the respondents have asylum permits, also known as a Section 22 permit, while a further 10 entered the country legally using passports as tourists but are working in the country illegally; they count as undocumented or irregular migrants since they are legal in one respect, but illegal in another. Only one of the respondents is an illegal immigrant since she did not have any papers to even partially regularise her stay in South Africa. This will be elaborated on below.

Work permits/Special Dispensation Permits
As mentioned above, only six of the respondents are in possession of official work permits, and three of them are Special Dispensation Permit holders. They had managed to obtain these with the help of their employers. As mentioned in Chapter 1, the Special Dispensation Permit is a new version of the Dispensation of Zimbabweans Project which expired on the 31st December 2014 and got replaced by the Zimbabwe Special Dispensation Permit (Department of Home Affairs, 2015b). This was part of a project by the South African government to avail an opportunity to Zimbabweans that are in South Africa illegally to regularise their status. However, those that did not have the first Dispensation of Zimbabweans Permit were unable to apply for the new Zimbabwe Special Dispensation Permit.

Passport

As already mentioned above, 50 per cent (10) of the interviewees entered the country as tourists using passports and then sought employment upon arrival, therefore working illegally. According to the Department of Home Affairs, a passport is “a document issued by a national government for international travel and it certifies the identity and nationality of the holder” (Department of Home Affairs, 2015b). This document alone does not permit one to stay in the country indefinitely or to seek employment. One needs a work permit to hold employment according to South African immigration laws, as mentioned in the first chapter.

When entering South Africa as a tourist, one is allocated a number of days for which one can stay in the country, after which one has to leave the country or apply to renew one’s stay once the period lapses. According to the Immigration Amendment Act 13 of 2011, people that stay beyond the authorised time within South Africa are then declared undesirable and are therefore banned from re-entering the country for a set period of time that is determined based on how long they overstayed their passports.

As already mentioned, half of the respondents used passports to enter the country as tourists but sought employment as domestic workers; these would be referred to as undocumented migrants since they do not have the relevant paperwork to legally work in the country. In addition, of the 10 women that used passports to enter the
country, five of them had overstayed their passports (i.e. they are staying in the country beyond the stipulated time).

Furthermore, four of the passport holders routinely take their passports “out” of the country. This means that when they are supposed to leave, they go to the border to get their passports stamped for exiting. However, they do not get back onto the bus and continue back into Zimbabwe. Instead, they sneak back into South Africa and continue working while their passports indicate that they are out of the country. Some of the women interviewed seemed to be very confident with this system; they do not fear being caught by the police or immigration officials. Domestic worker 2 from Montgomery Park (interview, 06/07/2015) shared how she is part of a network of immigrants in the country; they will help her in the event of getting arrested by the police. In her words:

When the police catch me, I don’t say anything about the passport, there is a network of people that help me that will bring my passport to me when I get deported.

The domestic worker will then use her passport to re-enter South Africa as a tourist once more and continue with her job on her return. For some of the respondents, it is better to be found without a passport and get deported than to overstay their passport and then be declared undesirable. While the South African government makes immigration laws more stringent and imposes increased penalties for non-compliance, migrants find innovative ways around the official system.

Furthermore, some of the respondents take their passports ‘out’ (as discussed above) to avoid frequent trips to the border to get their passports stamped for extending their stay, especially because transport is very costly. They do not have the luxury of taking days off from work every month to go get their passport re-stamped at the border, often also having to pay a bribe to have their stay extended. In the words of two domestic workers from Lindhaven:

At the border they only gave me one month, so I took the passport out … transport going to the border is R400 (domestic worker 2 from Lindhaven, interview, 28/07/2015).

I had an asylum [permit] and I lost it … it was going to cost me R1 000 to get another one. I don’t have that kind of money, I have responsibilities …
I also have a passport but it does not have a permit. Every 3 months I take it out and then back in to renew the number of days ... I cannot even apply for a permit because you have to do it back home, so I have to leave the country for that (domestic worker 1 from Lindhaven, interview, 18/07/2015).

Only two of the respondents said that they routinely take their passport to the border to get their days extended officially, although they also have to frequently pay bribes to immigration officials to be able to secure an extended number of days.

Asylum permits

Three of the 20 respondents (as mentioned) use asylum permits, which are also known as Section 22 permits, to regularise their stay in South Africa. The Section 22 permit is issued once an individual files an application with the refugee receiving officer to seek refuge in the country. This permit is used while waiting for the process of one’s refugee status application to be completed. Should the application be successful, applicants are then issued the Section 24 permit, which grants the applicant full refugee status.

Officially, this process has to be completed within 180 days of application; however, because of shortcomings in the Department of Home Affairs, it can take longer. The Section 22 permit grants the holders the permission to work in the country as an interim measure while waiting for their application to be processed. However, prior to 2004, Section 22 permit holders were not allowed to work in the country. In 2004 The Department of Home Affairs abolished this restriction (Belvedere, 2007: 59).

As mentioned in the first chapter, the 1951 Refugee Convention defines a refugee as someone who

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country (Refugee Convention, 1951).
South Africa does not have refugee camps like countries such as Kenya, Uganda and Tanzania. Asylum seekers often live in the urban areas alongside South Africans, often in those areas with refugee reception centres in their vicinity. Examples include Johannesburg, Pretoria and Cape Town. They prefer to reside in these areas mainly because they have to renew their permits regularly while their applications for full refugee status are pending. Therefore, this means that they have to take multiple trips to the refugee reception centres (Belvedere, 2007: 58). According to the Section 22 permit holders, their permits also needed to be renewed every three to six months while their application for refugee status was being heard.

While Section 22 permits are relatively easier to obtain than formal work permits or the Special Dispensation Permit, there are also certain limitations and obstacles that come with obtaining them. As mentioned above, Section 22 permit holders have to go back to the refugee receiving office to renew their permits, because it takes a long time for the entire refugee status application to be heard. For women working in the Johannesburg area, it means they have to spend money traveling to the refugee receiving offices and have to take time off from work on a regular basis.

Furthermore, once arriving at the refugee receiving office, the queues are generally very long. Some of the applicants even go as far as sleeping there overnight in order to move ahead in the queue. At times, multiple trips to the refugee receiving office are undertaken before they are assisted. Not only does this mean that they are spending a significant amount on traveling costs, it also means that they have to miss work on the days that they are sorting their papers out. A domestic worker from Cosmo City mentioned how she generally has to pay a bribe to be able to get moved to the front of the queue. According to her, “the more you pay, the further you get pushed up the queue”.

An additional challenge with the Section 22 permit is that it is a flimsy piece of paper which is very easily lost; it wears out very easily and within a short period of time becomes illegible. Scholars such as Landau (2010: 72) have also emphasised the challenges that come with carrying Section 22 permits in their current form.
It is interesting to note that the women that used Section 22 permits to remain in the country did not communicate any danger or threat to their lives prior to leaving Zimbabwe. When asked how they ended up coming to South Africa, all of them cited the need for employment or reuniting with a family member as reasons. When asked why she applied for refugee status, domestic worker 1 from Montgomery Park (interview, 06/07/2015) responded:

Because I don’t have to constantly go to the border to get my passport re-stamped. Sometimes when you go to the border to extend your stay [using a passport], they can just give you one week. Where will I find the money in a week to go renew again at the border?

It appears that some chose to apply for asylum because it is easier and quicker to obtain than a work permit, and is less cumbersome than a passport when working in the country. This practice is gaining popularity now that the applications for the Special Dispensation Permits have closed. Landau (2010:72) made a similar observation five years ago, maintaining that applying for asylum is a strategy that thousands of migrants use to partially legalise their stay in South Africa.

Of further importance is the fact that the women interviewed using Section 22 permits regularly went back home to Zimbabwe to visit their loved ones, regardless of the fact that according to law, Section 22 permit holders are not allowed to return to their country of origin to ‘visit’ since it defeats the purpose of being given refugee status in South Africa. This once again proves that there is no imminent danger to their lives in Zimbabwe. Therefore, the respondents simply sought Section 22 permits to regularise their stay in South Africa and not necessarily because they were fleeing any form of danger in Zimbabwe.

Still, Idemudia et al. (2013:19) argue that it is more accurate to describe Zimbabwean immigrants as refugees rather than immigrants because of “their lack of basic human, institutional, and structural resources”. They oppose the use of the term immigrant to describe Zimbabweans that leave because they believe it is not telling of the situation in Zimbabwe that pushes them to leave their country of origin. They argue that Zimbabweans migrate because of push factors rather than pull factors.
Furthermore, Idemudia *et al.* (2013:19) also argue that Zimbabweans experience challenges en route to South Africa and these challenges justify why this group should be granted refugee status in South Africa. For instance, they highlight that there are many women that have to engage in survival sex in exchange for resources and services to enter South Africa (Idemudia *et al.*, 2013:19).

**Clandestine routes**

Only one of the 20 respondents entered South Africa using clandestine routes or 'the back door'. This includes entering the country using the river or crossing any border into South Africa illegally and undetected by immigration officials.

Although this study cannot be compared to that of Pretorius and Blaauw (2014:8) due to the difference in sample sizes and demographics, among other things, it is interesting to note the difference between their findings and the trend in this study. In their study, they found that only 11 per cent of the sample entered the country using a visitor’s passport. An overwhelming majority of the sample interviewed confessed that they had entered the country using clandestine routes. One should add that not only did the Pretorius and Blaauw (2014) study consist of a much larger sample of Zimbabweans across the country, but also female respondents in their study only made up 3 per cent of the sample.

Evidence suggests that women are more likely than men to use official routes when migrating to another country, as mentioned in the second chapter. For instance, in a study conducted by Leftko-Everett (2010:274) of the Southern African Migration Project, it was found that even during times when Zimbabweans were required to obtain a visa to enter South Africa, the majority of women still opted to apply for visas regardless of the high cost. This seems to coincide with the trend in this study; there was a preference among the respondents to enter the country legally, and where possible, to live and work in the country legally.

Strict immigration controls and laws are partially liable for pushing migrants into the undocumented sphere. Amid a hostile immigration regime, migrants seek alternative
ways around the official South African immigration system. Many of the domestic workers interviewed in this study reiterated the danger that comes with using clandestine routes. The official route to South Africa is a safer option. According to domestic worker 1 from Krugersdorp (interview, 27/06/2015), who came to South Africa using a clandestine route:

Many people die there, they drown. But there are people that assist you with crossing the border illegally, we pay them around R1 500. There are people that live in the bush and they rob people that cross the border illegally. You cannot wear branded clothes because they will take them …

The discussion above illustrates that the respondents were pushed by different reasons to migrate to South Africa. Moreover, they also adopted different methods to attempt to regularise their stay in South Africa, with some methods being more empowering than others. For instance, migrants with valid work permits are in a better off position because they are more likely to access better employment opportunities than those without work permits.

4.3 Working conditions

As mentioned in the previous chapter, labour laws such as the Sectoral Determination 7 and the Unemployment Insurance Fund set out various requirements and standards that employers have to abide by when employing domestic workers. As mentioned in the introductory sections of this chapter, these cover aspects such as registration, contracts, matters pertaining to unemployment insurance, working hours, remuneration and leave, among other things.

Although the aim of Sectoral Determination 7 is to protect domestic workers, the findings of this study suggest that it does not always reach all domestic workers. In their isolated workplaces, there are some women that still work under difficult and exploitative environments, as will be illustrated in the following sections.

4.3.1 Written particulars of employment
As already mentioned, there are various broad areas that are covered in Sectoral Determination 7 which cover contracts, wages, working hours and leave, among other things. This section will deal with the written particulars of employment: these include registration and UIF benefits (as stipulated in the Unemployment Insurance Act), contracts and job descriptions.

Registration of workers and UIF

According to the Unemployment Insurance Act, employers are required to register their workers with the Department of Labour and contribute monthly towards their UIF. According to the Act, the employer and the employee both have to contribute one per cent each of the value of the worker’s pay (Department of Labour, 2015). This provides an opportunity for the employer to formalise relations between themselves and their employees. The law also stipulates that employers should register their workers for UIF benefits, which is a great empowerment tool for women working in a very unpredictable sector. Therefore, failure to do so is a contravention of the law.

Only two out of 20 of the respondents were registered with the Department of Labour even though a total of six respondents were in possession of work permits and three others had asylum permits. Furthermore, two others had been previously registered by their former employers but were not registered with their current employers. The remaining 16 had never worked for an employer that had them registered. A domestic worker from Witpoortjie (interview, 03/07/2015) in the West Rand of Johannesburg expressed her frustration as follows:

White people cheat us because we are not registered, I heard we are supposed to get registered. If you ask them about registration they fire you. I wish people from the Department of Labour do a door to door to see for themselves what is going on.

However, it is also important to note that it is not only white employers that fail to register their employees with the Department of Labour. The decision not to register an employee has nothing to do with the race of the employer. Both the respondents that were registered with the Department of Labour worked for white employers. The
key determinant seems to lie with the perception that the employer has of domestic work. Those that perceive it as ‘real’ work like any other job are more likely to register their employees compared to those who don’t. Furthermore, employers that hire migrants with the primary intention of circumventing South African labour laws are very unlikely to register their domestic workers with the Department of Labour.

This proves that while registering workers with the Department of Labour is a compulsory requirement, this practice has not penetrated the domestic worker sector sufficiently. The data collected in this respect suggests that employers still seem to prefer to treat domestic workers as informal work not covered by government regulation.

Contracts

Section 9 of the Sectoral Determination 7 calls on employers to draft contracts for their employees that specify various aspects such as the date of commencement of work duties, hours of work, remuneration, rate of payment for overtime, period of notice for termination of a contract and job description. These are key issues that need to be agreed upon before any employee can commence work. However, only four of the 20 respondents had formal contracts that they signed when they started working for their employers.

This trend seems to coincide with the findings of a study conducted by Fish (2006) among South African domestic workers 10 years ago. She found that only three out of a sample of 75 domestic workers had signed formal work contracts with their employers. According to Fish (2006:116), “even Members of Parliament, Gender Commissioners and Feminist Scholars found the use of a contract difficult and avoided its implementation in their own employment of workers”. Employers have normalised the informality of the sector, perpetuating the idea that domestic work is not real work.

Fish (2006:116) also indicates that employers invoke various excuses to justify their failure to draft contracts for their employees. To begin with, many of the employers interviewed in her study cited language barriers as a reason for failure to comply with
their obligations. They argue that it is difficult with their domestic workers if there is lack of understanding due to language. Other employers pushed the blame onto their workers, they claim that domestic workers are resistant to signing contracts because it is contrary to ‘their culture’ of casual labour.

This speaks to the lack of urgency among employers to abide by labour laws and ensure that their workers sign contracts prior to commencing work, as the law stipulates. Therefore, this implies that regardless of nationality, not much has changed in terms of contracts since the implementation of the Sectoral Determination 7.

The perceptions of the domestic workers themselves on what they are entitled to are also interesting. It appeared as though most respondents did not expect to be registered or to be given formal contracts to sign by their employers; it seems to be something outside the norm. In response to a question to a domestic worker from Dainfern on whether she had asked her employers for a contract to sign before she started working for them, she said, “No, I don’t even think about it”. However, some deliberately choose not to ask about employment contracts out of fear of getting dismissed and out of desperation to maintain a job. When asked why they don’t ask their employer for a contract, the domestic worker from Rosettenville (interview, 24/06/2015) answered:

I have never signed an agreement. When you go there and you try talk about that paper, you are done my sister. Don’t do that because you are done.

It seems that Zimbabwean domestic workers (in this case) do not know their terms of employment. It seems as if their salary was the only aspect that some of the respondents were prepared to negotiate on before commencing work.

Job descriptions

As mentioned above, Section 9 of the Sectoral Determination makes provision for employers to draft a job description for their workers in the contract before they can commence work. However, none of the domestic workers interviewed were given written job descriptions, not even the ones that signed contracts before starting work.
The respondents interviewed explained that the assumption is that they already know what to do because it is ‘house work’ and they are women. When asked whether they have been given job descriptions, the domestic worker from Strubens Valley (interview, 19/07/2015) answered:

No there is no such, you get there then umlungu [the white employer] will give you instructions as you go, sometimes they tell you what to do, sometimes they write it on a note and leave it for you. There are no job descriptions, they will tell you; you know what to do around the house.

When asked what their duties around the house were, most domestic workers answered “I do everything”. Although often overlooked, the challenge is that the absence of clear job descriptions often causes confusion when it comes to what employers expect from their employees or what workers believe their work entails. For instance, a domestic worker from Jukskei Park (interview, 13/07/2015) interviewed said

I had an employer that would ask me to wash their dogs and I was not expecting this. This was not part of my job, or they would ask me to sweep outside whilst they have a garden boy.

This statement illustrates that although upon commencing a job the assumption by the employer and employee is that they have a mutual understanding of what “domestic work” entails, as time passes it becomes evident that the two parties have different ideas of what the job of a domestic worker comprises.

While the importance of registration, work contracts and job descriptions is evident in formalising the relationship between employers and their domestic workers, the above findings provide an indication that these provisions are neglected. Evidence also suggests that this not a feature unique to Zimbabwean domestic workers only, but concerns even South African domestic workers as Fish’s study suggests. In a decade little seems to have changed in terms of introducing contracts and job descriptions (although a representative study on domestic workers in South Africa is required to provide a thorough picture).

4.3.2 Entitled leave
Another important aspect that the Sectoral Determination 7 regulates is leave. The law makes provision for annual leave, sick leave, family responsibility leave and maternity leave. For the purposes of this chapter, attention will be given to annual leave, maternity leave and sick leave as they are the most basic requirements an employer is supposed to meet.

**Annual leave**

Section 19 of the Sectoral Determination 7 makes provision for employers to grant their domestic workers a minimum of three weeks' leave with full pay for every 12 months. However, only eight out of 20 respondents received paid annual leave. The rest of the respondents worked on a 'no work no pay' basis, which means that they only got paid for days in which they worked. No work no pay also means that failing to work on a public holiday results in no pay for that day. The domestic worker from Strubens Valley (interview, 19/06/2015) stated:

> As a domestic worker, you don't get paid when you go on leave, even on public holidays you don't get paid, no work, no pay. Even though I don't make public holidays, it is the government that makes holidays, they won't pay you. They will tell you 'no work no pay'.

Some of the respondents seemed to have arrangements in place with their employers with regard to their annual vacation leave and public holidays. The arrangements are not always ideal for both parties, but because of the heavily skewed power relations, more often than not, the domestic worker will accept the arrangement. For instance some of the domestic workers only went on leave once their employer also leaves on vacation. Other types of arrangements are also made between the employer and employee. For example, domestic worker 1 from Montgomery Park mentioned how she asked her employer to deduct R200 a month from her salary that she would give to her when she goes on leave. It is important to note that while in every working relationship superiors wield more power than their subordinates, and the power inequalities in such relationships are exacerbated by the absence of platforms where workers (in this case domestic workers) can voice their complaints without feeling threatened.
Maternity leave

Moreover, Section 22 of the Sectoral Determination 7 makes provision for maternity leave. According to the Act, “a domestic worker is entitled to four consecutive months of maternity leave”. While the Sectoral Determination 7 does not explicitly mention that employers are to pay their workers during this period, it becomes very difficult for the domestic workers to support themselves during this period considering that a majority of the employers also don’t register their workers for UIF benefits that they can claim to supplement their income.

Of the 20 respondents, only two had access to paid maternity leave; it was stipulated in their contracts. It is also interesting to note that both these respondents had work permits. Furthermore, two other respondents had been denied paid maternity previously and this is how they knew they did not have this benefit – it had not been discussed before. The remaining 16 respondents were unclear if they would get paid maternity leave should they fall pregnant; this is something they had never discussed with their employers. The domestic worker from Strubens Valley (interview, 19/06/2015) said:

I do get maternity leave, but sometimes they don’t pay me for maternity leave. So I end up cutting my maternity leave short and going back to work with my baby because I don’t get paid during the leave.

What became evident during the interviews is that domestic workers form networks with other women that ‘fill in’ for them in their absence (during maternity leave or vacation leave). The primary domestic worker will inform her employer of her intention to go on leave and ask for permission to have a friend or relative fill in for her.

This practice serves two purposes: the first is that the employee is certain that she will still have her job on her return. Secondly, it ensures that the employer will continue paying her salary. The responsibility then lies with the two workers to decide how the salary is split. There are also some employers that are generous enough to pay both the domestic worker on leave and the substitute worker. The substitute worker uses this opportunity as a platform to enter the job market. After ‘filling in’ for
someone, the employer can sometimes recommend them to another family in need of their services.

Sick leave

As already mentioned, Sectoral Determination 7 (Section 20) makes provision for paid sick leave. However, this is not a regular occurrence in this sector. The majority of the respondents (12) indicated that they work on a ‘no work no pay’ basis. This means that on days that they fail to go to work due to sickness, their employer does not pay them. This is an arrangement some seem to have accepted, although they admit that it is not ideal.

Some of the domestic workers are aware that the law protects their right to sick leave. However, this knowledge does not change anything; they have to accept that their employer will deduct money for their absenteeism should they fall sick. According to the domestic worker from Rosettenville (interview, 24/06/2015):

I don’t think it’s very different here in South Africa. You know you do have a right for leave, you do have a right for maternity leave, but they don’t give you this. I told the other one and I said ‘Sir if I am sick, if I produce my doctor’s note then I should be paid’ … but then they said ‘no, if you see that this job is too hard for you then you can go. No work no pay, it is pay as you go’.

This is another area where the non-compliance with the law on the side of the employers is blatant. The workers, on the other hand, are not empowered enough to challenge their employers to meet their obligations.

In conclusion, it is evident that while domestic workers work for extended periods in some instances (as will be discussed below), they do not get adequate time off work coupled with remuneration. Once again, the findings of the study suggest that employers are to a large degree ignoring their obligations to their employee when it comes to matters pertaining to leave and therefore breaching labour laws.

4.3.3 Working hours

The Sectoral Determination 7 implicitly distinguishes between three kinds of workers, namely: full-time workers, temporary workers and casual workers. The Act makes different provisions for each of the abovementioned cohorts of workers. However, there appear to be misconceptions among employers on the kinds of benefits and
protections temporary and casual workers enjoy. As already discussed in the second chapter, all cohorts of workers are protected to varying degrees, and below is an application of the provisions and a discussion on how this affects Zimbabwean domestic workers in practice. The section will also highlight some of the challenges the workers in these different cohorts experience as established from the interviews.

**Casual and temporary workers**

As mentioned in the third chapter, the Sectoral Determination 7 distinguishes between workers that work more than 27 hours per week and those that work less than 27 hours per week. The workers that work less than 27 hours a week, but more than 24 hours a month qualify as temporary workers. All the provisions of the Sectoral Determination 7 apply to this cohort of workers. The only distinction is a variation in wages. Of the 20 respondents interviewed, only five of them can be classified as temporary workers based on the hours they work. This variation will be discussed in further detail when wages are discussed.

Casual workers, on the other hand, are those that work less than 24 hours a month. These workers are only protected by clause 2 and 3 of Sectoral Determination 7, which set out minimum wages. However, generally, an overwhelming majority of domestic workers work more than 24 hours each month and therefore cannot be said to be casual workers. None of the respondents interviewed fall under this category, since they all worked for more than 24 hours each month.

A study by Matjeke et al. (2012) found that after the adoption of Sectoral Determination 7, a significant number of employers dismissed their full-time employees because of the belief that the law is too demanding. According to Matjeke et al. (2012:1), around the time Sectoral Determination 7 was enacted, the number of domestic workers working in South Africa dropped by roughly 48 000 within a period of one year. As an alternative, employers turned to using once-off domestic help services such as Lizzy’s Maids or Maids and Madams to circumvent the responsibility of complying with labour laws. However, there are also those that took the route of employing domestic workers on a part-time/casual basis.

Some employers see casual domestic workers as an opportunity to save on costs if they pay a domestic worker for a service rendered once or twice a week as opposed
to employing them full time and having to pay them for more hours (while expecting them to do the same work). In the words of two domestic workers:

They pay you R250 per day, but instead of them letting me into their house for two days because I need to iron, I need to wash clothes and do everything, so now they reduced that day to one day, so now I do a week’s worth of work in one day (domestic worker from Central Johannesburg, interview, 15/07/2015).

I used to work for my employer for three days now it is two … they wanted to share me with their friends (domestic worker from Dainfern, interview, 24/07/2015).

However, this study also found that there seems to be a growing preference among domestic workers for part-time work over full-time employment. The respondents claim that they are able to earn more money by working for different employers on different days of the week, charging each one a daily rate. Domestic worker 3 from Krugersdorp (interview, 13/07/2015) said:

The first time I was working full time for a white couple in Florida, then a lot of people advised me to go for a piece job because it pays more, so I left those people. They were paying me R1800 per month, then I started looking for these part-time jobs and I ended up getting more money. Some paid me R150 per day, some R250, and when you babysit they count per hour.

However, the negative aspect to temporary or casual employment is that the workers do a week’s worth of work in a single day. They work under immense pressure to complete their tasks, which include washing, drying the clothes and ironing within the set hours. They are also under pressure to complete their tasks on time to catch a taxi home before sunset. The domestic worker from Rosettenville (interview, 24/06/2015) described in what condition she would find the house on the day she went to work:

All the dishes, they cook, all the pots for the week, all the plates for the week, all the coffee mugs for the week. You have to pick up water glasses from everywhere, I mean everywhere, even the bathroom … look at the weather, they expect the clothes to dry, you iron. You wash the windows for the whole house, you do the blinds for the whole house, in a day.

**Full-time workers**
As mentioned above, full-time workers are those that work more than 27 hours a week. In addition, domestic workers may only lawfully work a maximum of 45 ordinary hours per week and nine hours per day, provided they only work five days a week. Domestic workers that work extra hours are entitled to overtime payment that is equivalent to at least one and a half times their normal wages (Department of Labour, 2015).

Out of the 20 respondents, 15 work more than 27 hours per week and can therefore be classified as full-time workers. Nine of the respondents worked for nine hours or more per day without being compensated for their overtime work. Six of the respondents that work full time are ‘live-in’ domestic workers. It became evident during the interviews that ‘live-in’ domestic workers are far more vulnerable to working unreasonable hours since they live at their place of work, which affords the employer easy access to them. There is an evident absence of formal arrangements on what time the domestic worker starts work and what time they finish work. Employers at times abuse the access they have to their workers. For instance, a domestic worker in Cosmo City works for 16 hours each day and earns R1 500 per month. When asked when she rests, she answered “I rest when I am sleeping”.

Some ‘live-in’ domestic workers are expected to start work as early as 5:30 am to wake up the employer’s children and prepare them for school, and also prepare their lunch boxes. Once their day has started, they stay up and continue with their daily chores. Their day ends after they have washed the dinner dishes of the family, which is around seven o’clock in the evening. Domestic worker 2 from Krugersdorp (interview, 27/06/2015) shared a story about her previous employer:

I was living with them, if they are awake until 10pm it means that I have to be awake also … I have to make sure I do the dishes before I go sleep … I was staying in their back room, they call me around 1 am to say there is no toilet paper in the toilet in the main house … so I took my handbag and put my clothes in and I never went back.

Another ‘live-in, domestic worker, (1 from Lindhaven, interview, 18/07/2015) mentioned how for as long as she is in the employer’s house, she is working, regardless of the hour of the day or day of the week. She said “if I don’t go anywhere, I have to work”. This means that for some weeks, she works seven days
a week for very long hours each day. Also very interesting to note about this particular domestic worker is that she was totally unaware that working 14 hour days, seven days a week is abnormal. This was also compounded by the fact that this was the only family she had ever worked for since her arrival in South Africa. Because she is a ‘live-in’ domestic worker, she leads a very isolated life and has limited interaction with the outside world.

However, two of the six ‘live-in’ domestic workers have strict working hours outlined by their employers and they get compensated accordingly for overtime work. In the words of the domestic worker from the Northern suburbs in Johannesburg (interview, 10/09/2015):

When I knock off I knock off, if they need me for extra hours they let me know in advance that they will need me on which day, then we discuss if they will pay me extra. Sometimes I tell them not to pay me, then I take time off instead if I need it.

This section has highlighted the variations that exist in terms the three categories of workers. It is evident that when it comes to working hours as set out by the law, there is great variation among employers. While most employers of Zimbabwean domestic workers in this study appear to be ignoring their obligations as stipulated in Sectoral Determination 7, there are also those that are mindful of the law and adhere to it. However, these are in the minority. The next section is dedicated to discussing remuneration in accordance with the provisions set out by Sectoral Determination 7.

4.3.4 Wages and deductions

As already mentioned, the Sectoral Determination 7 categorises workers into three different categories (full-time, part-time and casual workers) and makes provisions accordingly. This section discusses the wages the interviewees earned in these three categories and whether these are in accordance with Sectoral Determination 7. However, since none of the respondents were casual workers, attention will be devoted to discussing the findings in terms of full-time and temporary workers against the stipulations of the law (see Chapter 3).

*Casual workers*
As has been established, casual workers are the domestic workers that work for 24 hours and less each month. This group of workers is by law entitled to a wage of no less than R12.40 per hour.

While none of the respondents interviewed fall under this category, it is evident that Sectoral Determination 7 poses challenges when it comes to the minimum wages set for casual workers. The stipulated wage barely covers the daily expenses of a casual worker. Typically, a domestic worker will work for eight hours in a day. According to the law, the worker should then get paid R12.40 per hour, which amounts to R99.20 per day. In almost all cases, casual workers have to pay for transport to get to work (this can range from R20.00 to R50.00 per day depending on the distance). Furthermore, the worker may have to have to pack his/her own lunch to work. Taking these two factors into account, it becomes evident that R99.20 per day is not enough money to cover all expenses of the worker. This demonstrates that casual workers are not sufficiently protected by the law.

Full-time workers

Sections 2-5 of the Sectoral Determination 7 outline the minimum wages that ought to be paid to domestic workers (see Chapter 3). According to the law, domestic workers that work for more than 27 hours per week in metropolitan areas in the period of 1 December 2014 – 30 November 2015 are supposed to earn no less than R2 065.47 per month. Furthermore, those that work for the same number of hours in rural areas must earn no less than R1 812.57 per month. This figure increases annually.

Of the 20 respondents interviewed, 15 work for more than 27 hours per week and can therefore be classified as full-time workers, as already mentioned. Of the 15 full-time domestic workers, five are paid below the stipulated minimum wage. However, it is also interesting to note that while five domestic workers were being paid below minimum wage, 10 of the 15 respondents expressed complete dissatisfaction with their salaries. Furthermore, only three of the 15 respondents claimed to be content with their salaries. The remaining two were indifferent.
Temporary workers

Sectoral Determination 7 also stipulates that domestic workers that work for less than 27 hours per week in metropolitan areas must earn no less than R1 450.33 per month. In rural areas they must earn no less than 1 284.09 per month (Department of Labour, 2015). All the domestic workers interviewed in this study are from the Johannesburg area and should therefore be paid wages in line with the above stipulation pertaining to metropolitan areas. Five of the 20 respondents fall under this category. Of the five temporary workers, three are paid below the minimum wage.

Bargaining power of domestic workers

The majority of the respondents interviewed did not feel confident enough to negotiate for their salaries. This feeling of insecurity is exacerbated among migrant workers without permits. Workers with permits, on the other hand, felt some sort of empowerment which permitted them to negotiate certain aspects of their employment. Domestic worker 3 from Krugersdorp (interview, 13/07/2015), who has a permit, shared:

I went to another couple and they said they will pay me R130 per day and I said no, give me R150, so they told me there are people out there on the streets that [they] can give R80. I said ‘oh, they [must] take them’. Then she called me after two or three weeks and said she will give me R140, I said ‘no, R150’.

The majority of the respondents did not seem to ask questions on whether their employers would be deducting anything from their salaries, or what their overtime rate would be. Even pivotal matters such as annual salary increases were not discussed prior to commencing work. The domestic workers simply learned of their employer’s decisions as time went on, often being too late to try negotiating for something that suits both parties.

As already mentioned, a number of the respondents were not satisfied with their salaries. When asked why they think their employers pay them small wages, domestic worker 2 from Krugersdorp (interview, 27/06/2015), who had been working for the same employer for a period of five years, answered:
They told me that the government does not allow them to pay foreigners a lot of money, so they will give me a R10 increase so that I work for R115.00 per day. Ever since I worked for R115.00, it has never gone up.

This is regardless of the fact that according to Sectoral Determination 7, an employer is obliged to give his/her employee an annual raise. The domestic worker from Strubens Valley answered:

If I was a white woman I would not get that salary because white people have many things that they do. So for a black person, they tell themselves that black people can cope with R100 per day.

This domestic worker felt very strongly that her identity as a black woman shapes how employers value the worth of her labour. Brown and Reynolds (1994:77) argue that some employers believe they are justified when paying their domestic workers low wages because of the perception that house tasks are relatively easy. This phenomenon will be expanded on in the subsequent chapter. Even so, Brown and Reynolds (1994:77) also highlight that employers pay their domestic workers in relation to what they themselves earn, low paid employers are more likely to pay their domestic workers low wages.

It is also interesting to note that some domestic workers found ways to supplement their income, often by getting other ‘piece jobs’ in addition to their full-time jobs or by simply having multiple ‘piece jobs’ and no full-time job. Five of the 15 full-time workers interviewed had other jobs on the side. For instance, one of the domestic workers interviewed worked Monday to Friday for her full-time employer. On weekends she worked in a surgery as a cleaner. Other respondents did ironing or cleaning for other families on Saturdays and public holidays as ways to supplement their incomes.

Pretorius and Blaauw (2014:13) found that when migrant workers find employment that does not pay them according to their expectations, they are likely to keep the job because it is still better than being unemployed. The migrant workers also work with the hope that things will get better someday and somehow. The women interviewed had a similar attitude. For these domestic workers, it was better to stay in a low-paying job while looking for another one than quitting and staying unemployed for a certain period. Domestic worker 2 from Krugersdorp (interview, 27/06/2015) said:
I am working because I am poor, I am a beggar just so my child can eat and wear clothes. They give me old torn clothes when they feel like it. I cannot get any other job by the factories because I have no ID or passport.

**Payslips**

According to Sectoral Determination 7, employers can only deduct up to 10 per cent of the domestic worker’s salary or monthly wage for accommodation. However it has been very difficult to establish if employers did deduct money for live-in domestic workers, since a majority did not receive any payslips. Only two of the respondents receive a payslip from their employer every month. Of the live-in domestic workers interviewed, half of them were paid below the legal minimum wage. It is difficult to establish if accommodation deductions contributed to the low wages. An overwhelming majority of the domestic workers interviewed were simply given their salaries in an envelope. An exception was a domestic worker that also received her salary in an envelope, but got to regularly sign for it in a little book kept by her employer.

The domestic worker from Rosettenville (interview, 24/06/2015) made an interesting observation concerning payslips. She is of the view that employers do not issue payslips and leave forms to their workers because their workers can use them as evidence when reporting their employer to the CCMA. They can serve as proof of underpayment. According to her:

> You see, payslips, it is proof of payment so that you can report me to the CCMA. You know me I see everything, even a leave form you can’t get a leave form … they [government officials] will see that oh, you are paying this one less. Then later you will use it and they will be caught in the court of law and they don’t want that.

**Other forms of ‘payment’**

Although the wages of the domestic workers that were interviewed are an issue as just below half were paid below the minimum wage, some acknowledged that although their employers do not pay them the amount of money they would have
wished for, the support and friendly environment in which they work make up for the
deficit in wages. According to two domestic workers from Florida:

Even though they pay me a small amount of money, the interaction and support I get from them makes me feel like I am in good hands. Sometimes when my children are sick, they buy me medication and they don’t make me pay for it (domestic worker 1 from Florida, interview, 04/06/2015).

For me it is better to work peacefully, than to be stressed out and earning millions (domestic worker 2 from Florida, interview, 04/06/2015).

Interestingly, while some employers are not willing to give their domestic workers salary increases, citing lack of affordability as the main reason, they are willing to spend additional amounts on the worker and her family. In the words of two domestic workers:

My employers give me clothes for my children, they even buy them new clothes. They are willing to buy things for me but they are not willing to pay me more. They give me furniture, cell phones and other things, just not money. They get me medicine when I or my children are sick, expensive medicine … they would rather spend over R100 on a jacket for your child, but they will never give you that money in cash … when you ask for an increase, they will tell you they give you a lot of things. (domestic worker from Strubens Valley, interview, 19/06/2015)

Yes, they give me money, they give me things, they give me beds, everything. For now I am ok. They even communicate with my parents (domestic worker 1 from Florida, interview, 04/06/2015).

This relationship almost represents a parent-child relationship, where the parent is willing to give their child a certain amount of money, but cannot trust them with more. However, for some domestic workers, there are no other benefits that their employers use to supplement their low wages with. When sharing her experiences about her employer, domestic worker 1 from Krugersdorp (interview, 27/06/2015) said:

I have to pack my own lunch because I am not allowed to eat there … I get R120 per day … they sell me their old clothes, they can charge you R300 for clothes … no bonus, no nothing, not even an apple.

Conversely, some employers are still willing to give their employers additional benefits while also giving them a decent wage. An example is domestic worker 3
from Krugersdorp (interview, 13/07/2015), whose previous employer, in addition to her decent wages, gave her food and money for transport:

> If I could get the chance of going back there I could go, even the money they were paying me was nice. They were giving me R260 [per day] plus R40 transport [money] every day. And on top of that, the lady said she does not cook, she would buy me takeaways every day for my lunch, you would see the slip and it is R40, R50, R60, everyday.

**Bonuses**

It was also found that it is not popular for domestic workers to get bonuses at the end of the year. Only five of the respondents received bonuses from their employers every year. The domestic worker from Montgomery Park had an arrangement with her employer that the employer would deduct R200 per month from her salary for 11 months and give it to her in December when she goes back home. The remaining 14 of the respondents received nothing at all in the form of bonuses; some did not even receive their salaries when taking their vacation leave. According to domestic worker 2 from Krugersdorp (interview, 27/06/2015):

> I don’t even get a bonus, they buy me a sweet aid, 500 grams of white sugar, soy beans, a small tin fish and 1 kg mealie meal.

**4.4 Remittances**

Despite the low wages that the majority of respondents are paid, all of them have to stay employed to meet the responsibility of sending money home on a regular basis. Of the 20 respondents interviewed, 18 send money regularly to relatives in Zimbabwe. The remaining two said that although they would like to send money home, they could not afford it. They both have families in South Africa that need to be taken care of and they do not have enough disposable income. In the words of the domestic worker from Witpoortjie (interview, 03/07/2015):

> I don’t send money back home, my boyfriend does not work. All my children are here … I have not been home in four years, I cannot even afford to visit.

Sending money home is very important to migrant workers. Most of them said that the only reason they came to South Africa is to find employment so that they can
take care of their relatives in Zimbabwe. Some even went as far as remitting their entire salaries and living off wages they make through ‘piece jobs’ in South Africa. The situation is now even more difficult with Zimbabwe using the US dollar as the official currency.

My mother needs looking after; she doesn’t work anymore, so there is no job for her to do, she is just sitting. No companies are opened, so imagine at that stage, if you go into the shop, they want 5 US dollars. Here in South Africa it is almost sixty something Rands. That is why I have to cope with the situation. I have to force myself but it is painful (Northern suburbs in Johannesburg domestic worker, interview, 10/09/2015).

I do send money back home, I have a little sister that is still studying back home. Per month, I earn R1500.00. I pay R150.00 for crèche, I pay R170.00 for transport, then I take back R1000.00 per month back home… (domestic worker 2 from Krugersdorp, interview, 27/06/2015)

Every month [I send money back home] … all of it. I give them all because it is better for me to starve than at home (domestic worker 1 from Florida, interview, 04/06/2015).

Pretorius & Blaauw (2014:5) indicate that more than 80 per cent of all migrant workers in South Africa regularly send remittances home. Moreover, they argue that Zimbabwean remitters send more than 50 per cent of their salaries, a practice also found in this study. Of course, for this to happen, the migrant workers sacrifice (as noted above), a decent standard of living for the well-being of their families in Zimbabwe. Unfortunately, from the perspective of their families, this creates the illusion that the migrant worker is doing well in South Africa. The family members back home perceive it as an indication that there is more from where it came from, often putting additional pressure on the migrant worker.

‘Mask of Opulence’

Before migrating, many would-be migrants are made to believe that South Africa is a prosperous country with an abundance of wealth and opportunities for everyone (see Chapter 2). Migrants come with the belief that they will get a good job that pays well, and will therefore be able to take care of their family in Zimbabwe. This is what some
of the respondents shared about their experiences in South Africa in light of what they had expected to find prior to leaving home:

Sometimes people pretend like it is easy to get money and jobs. But it is so hard to get the money. My sisters back home, they don’t even know that it is hard in South Africa (domestic worker from Mondeor, interview, 5/09/2015).

I thought life is easy here (domestic worker from Cosmos City, interview, 07/07/2015).

No, everything was different to what I expected, the only thing is that here you can find a job, back home there are no jobs (domestic worker from Dainfern, interview, 24/07/2015).

Attaining a level of success in the host country is something that is perceived as inevitable. Anyone that migrates has to live up to that expectation, otherwise they are frowned upon back home. According to Kihato (2013), there are certain expectations that are attached to migration; failing to meet those expectations is like committing social suicide. Social suicide refers to the shame that befalls not only the migrant, but their families too, should they fail to live up to the societal expectations and fulfil certain material obligations.

Migrants then wear what one could describe as a ‘mask of opulence’, which coincides with the prevailing perceptions of what life in South Africa ought to be like, and display their wealth. This is done to emphasise the ‘success’ they have attained in South Africa. However, affording that mask comes with a lot of sacrifice: migrants have to work hard during the year and sacrifice a decent standard of living so that they can save for their home visit at the end of the year or during the Easter holidays.

Zimbabweans hide how they live when they get back home, they pretend we live lavishly. People back home think we live lavishly ... we look good when we go back home, they even hire other people’s cars (domestic worker from Witpoortjie, interview, 03/07/2015).

Yes they hide the truth, you see them dressed well, you think they have good jobs, they can afford to look good, but oh! (domestic worker 2 from Lindhaven, interview, 28/06/2015)

Because people when you are going home, you just buy nice things.. Because everyone at home they say you are working. They don’t even understand when you say you don’t have money, they say you don’t want to give them (domestic worker from Bedfordview, interview, 02/09/2015).
I was very scared, I did not know that people lived in shacks. Then I ended up living in a shack myself. Zimbabweans in South Africa don’t reveal the truth back home, they hide and pretend to have money. They hide that they are living hard this side (domestic worker 1 from Krugersdorp, interview, 27/06/2015).

While sending remittances and providing for one’s family is a crucial part of a migrant’s work life, as discussed above, this section also illustrates that migrants run the risk of portraying falsified images of the ‘success’ attained in South Africa.

4.5 Conflict resolution mechanisms and techniques

Conflict Resolution Mechanisms are increasingly important in every area of life since they are vehicles through which conflicts which arise among people are resolved; the workplace is no exception. As already mentioned in Chapter 3, the Commission for Conciliation, Mediation and Arbitration (CCMA) is an official body that is mandated by the South African government with mediating labour disputes. The evidence from the above sections suggests that employers are not complying fully with labour laws, and therefore, migrant domestic workers have the option of reporting this lack of compliance to the CCMA. However, the majority of the respondents did not feel comfortable approaching such institutions.

While respondents with official work permits were found to be more likely to approach official bodies such as the CCMA in the case of disputes with their employers, those without permits find themselves in a paradoxical position where on the one hand they may have disputes with their employers which need intervention by a third party to mediate, but on the other, they cannot be guaranteed that their illegal status won’t be used against them during such processes, which would be like exposing themselves as prey to the outside world.

The respondents without work permits were highly conscious of their illegality, which then in turn rendered them disempowered to approach such bodies for labour matters. When asked if they would ever approach the CCMA in a case of a labour dispute, this is what some of the respondents shared:

No I wouldn’t, I think you need a valid passport and permit to go report cases with the CCMA … It would be great to have someone fight for you,
South Africans have power, they are able to stand up for themselves, they can go to the CCMA. Zimbabweans cannot stand up for themselves. Employers prefer people with the least power (domestic worker 2 from Montgomery Park, interview, 06/07/2015).

No I cannot go there, when I get there they will want an ID, they will want a passport. They will ask me how come I got hired without an ID and a passport. I could get arrested (domestic worker 1 from Krugersdorp, interview, 27/06/2015).

What can I say? I have nothing. If they fire me I cannot report anything. I don’t have an ID, I don’t have a passport. Those that have these things have power, I don’t have power. The employer treats me the way they do because they know I cannot report them (domestic worker 2 from Krugersdorp, interview, 27/06/2015).

It is for this very reason that undocumented migrants are becoming a favourite for employers with a deliberate intention to circumvent labour laws in order to reduce the risk of being caught. Migrant domestic workers are also fully aware of this reality:

If the white man knows that you are protected by the CCMA, by the law, that is why you see many people they don’t get jobs. They don’t want people that are protected by the law because the moment they see you are protected by the law, they tend to know that you know your rights (domestic worker from Rosettenville, interview, 24/06/2015).

While the ‘migrant illegality consciousness’ is one of the main reasons that some of the respondents cited for their fear of approaching the CCMA, other respondents were of the opinion that other components of their identities such as their class made them unlikely to win CCMA cases, and therefore they generally lost faith in its ability to fight the battles of poor black people. The following quotes underline this:

I won’t go because I am a foreigner, I am scared that they won’t help me ... and besides being a foreigner, even South Africans that go to the CCMA don’t get much help ... people with more money have more power than us workers. There are many people that went through this, the domestic workers end up giving up because they always miss work to go to court (domestic worker from Strubens Valley, interview, 19/06/2015).

My boyfriend went there until he no longer had shoes. He was fired by his boss that he worked for, for a very long time ... the CCMA kept giving him dates, nothing happened (domestic worker 2 from Lindhaven, interview, 28/06/2015).

The fear of approaching government bodies also extended to the police. Some of the undocumented respondents did not feel comfortable enough to approach the police
to report cases of a criminal nature. The level of corruption within the South African Police Services is also a contributor to the mistrust migrants have towards the police. These are some of the views shared by the respondents:

If I meet a policeman, he can take all my money. He says give me money if I don't want to be kicked out the country. You have nowhere to go to complain (domestic worker 2 from Florida, interview, 04/06/2015).

My challenge is that I don't have a permit. Sometimes I meet the police and they harass me. I am not comfortable. I am scared of those people. I cannot even walk in Joburg, they once apprehended me and let me go eventually (domestic worker 1 from Florida, interview, 04/06/2015).

Yes I would. I don't think they would arrest me for not having papers; that would not be doing what they are expected to do. (domestic worker 1 from Montgomery Park, interview, 06/07/2015)

As previously mentioned, the respondents with work permits and other official documents were more confident to approach the CCMA in the case of disputes with their employers. Domestic worker 2 from Montgomery Park (interview, 06/07/2015) shared:

I would feel comfortable going to the CCMA now because I have my Zimbabwean ID and passport with me. Before I had these things, I did not feel comfortable reporting labour disputes.

The domestic worker from Jukskei Park (interview, 13/07/2015) quit her job and took her employers to the CCMA after they failed to pay her salary for 6 months. In the end the employer owed the domestic worker R21,000 in back wages. She shared:

I was staying with them but I was thinking that since they are my bosses, they are telling me thing[s like] they don’t have money, they are going to pay me. But as time goes on I see that it’s not happening.

This domestic worker (who also has a work permit) won the case with the CCMA and her employer was ordered by the courts to pay her what was owed to her. However, the case of *Discovery Health Limited v the Commission for Conciliation, Mediation and Arbitration and Others* proves that a valid work permit is not a prerequisite for one to approach the CCMA with labour disputes, as discussed in Chapter 1.

*Deference as a conflict evading technique*
This section explores, in the words of Jacklyn Cock (see Chapter 3), the “mask of deference” that migrant domestic workers adopt in order to evade and contain conflict before it escalates to levels where intervention by the CCMA is needed. Thus far, some of the hardships that the respondents encountered in their workplaces have been discussed. It is evident that while the narrative of the ‘abused and exploited’ domestic worker does not always apply to all migrant domestic workers, the reality is that it still applies to many. Yet, one will find that migrant domestic workers still continue in their jobs no matter the circumstances, sometimes working under difficult conditions for as long as 10 years or more. Such women exist in paradoxical spaces where, on the one hand, they work in abusive, exploitative spaces in which they are dissatisfied, but on the other, no matter how poor the wages and work conditions, they have responsibilities that dictate that they stay employed. When asked if they ever defend themselves during disputes with their employer, this is what some of the respondents said:

No I will not do that, I will just keep quiet … if I have my own house to live [in] then maybe, then I can do what I want … I am scared of standing up for myself, but I am looking for alternative employment, I am scared, I prefer just keeping quiet even when something makes me angry (domestic worker from Cosmo City, interview, 07/07/2015).

No I would not [speak up for myself], I have not taught myself the habit of doing that, I just keep quiet (domestic worker 1 from Montgomery Park, interview, 06/07/2015).

Like Cock (1980) suggests in her study (see Chapter 3), the respondents in this study were found to also adopt a ‘mask of deference’ in order to navigate their workplace. The similarities between the findings of Jacklyn Cock’s study and this study could suggest two things: firstly, it could suggest that not much has changed for domestic workers in general post-democracy, even in the midst of laws such as Sectoral Determination 7, which are dedicated to protecting the rights of domestic workers. Alternatively, similarities could also suggest that migrant domestic workers have now assumed the position of subordination and powerlessness that black South African domestic workers used to occupy during the apartheid era. Therefore, while the Sectoral Determination 7 may be been able to restore dignity to South African domestic workers (although not in all cases), it has failed to reach those who are deemed illegal, irregular and undocumented.
This section clearly illustrates that all workers, regardless of their status of migrant legality, have a right to fair labour practices as guaranteed by the South African Constitution, Act 108 of 1996. The fear of approaching conflict resolution mechanisms is a key contributor in maintaining the exploitative and subjugated positions under which migrant domestic workers find themselves. Migrant workers should embrace such platforms as part of a journey to their full emancipation as workers.

4.6 Conclusions

This chapter mainly relies on the information from the interviews with 20 female migrants from Zimbabwe who work as domestic workers in the greater Johannesburg area. Although the aim of this chapter was to establish whether the employers of Zimbabwean domestic workers adhere to Sectoral Determination 7, it was important to first establish why the respondents came to South Africa and what their legal status is, since it could have a bearing on their willingness to challenge their employers should they not adhere to labour legislation in terms of, for example, working hours, working conditions and remuneration.

Their most cited reasons for migrating to South Africa included a lack of jobs in Zimbabwe, with this being the reason cited by 13 of the respondents, making it the most dominant. Other reasons included political instability, family reunification, access to improved medical care and perceptions of abundant wealth in South Africa. Likewise, their status of legality/illegality also varied significantly: six of the respondents have work permits, three use Section 22 permits and 10 used passports to enter the country as tourists but sought employment thereafter, meaning that they work in the country illegally. Only one of the respondents entered the country using clandestine routes and was therefore living and working in South Africa illegally.

This study indeed found that there were multiple shortcomings on the part of employers when it comes to adherence to labour laws pertaining to domestic workers. The most complied-with provisions included:

- Working hours (only four of the 20 respondents worked beyond the prescribed hours); and
• Remuneration (only eight of the 20 respondents was being paid below minimum wage).

The least complied-with provisions included:
• The registration of workers;
• Access to Unemployment Insurance benefits; and
• Matters pertaining to leave.

Only two of the 20 respondents were registered officially with the Department of labour and had access to UIF benefits while only one of the 20 respondents had a contract with their employer. With regards to leave, there is a wide belief in the principle of ‘no work, no pay’ among employers, making it difficult for domestic workers to take annual, sick or maternity leave. Only eight of the respondents have guaranteed access to paid annual leave.

While the findings of this study are by no means representative of the experiences of all Zimbabwean domestic workers (as mentioned before), they do provide some indication of the status quo. The findings suggest that employers hardly adhere to labour laws when employing migrant domestic workers. However, although institutions such as the CCMA exist to resolve work-related disputes in cases of abuse and exploitation in the workplace, the respondents, especially those without work permits, viewed it with great suspicion. The general belief among the respondents was that the CCMA mainly caters to the needs of South African workers and not ‘foreigners’. This therefore means that most of the grievances of the migrant domestic workers go unreported. Instead, migrants prefer to adopt a mask of deference in order to evade conflict and confrontation in the workplace.

The next chapter continues to discuss the information gathered from interviews with the 20 Zimbabwean domestic workers. It offers an intersectional analysis of the experiences shaped by the identity of the respondents and addresses the question of whether or not the race, class, gender and nationality of the respondents have a bearing on the kind of treatment they receive at work and in society in general.
CHAPTER 5
THE INTERSECTION OF RACE, CLASS, GENDER AND NATIONALITY

5.1 Introduction

Where the previous chapter examined aspects relating to the working conditions of the Zimbabwean domestic workers, this chapter explores in greater detail the manner in which the intersection of race, class, gender and nationality contribute to the lived experiences of these domestic workers. Intersectionality, as discussed in the third chapter, refers to a collection of variables of identity such as gender, race, and nationality, which intersect and shape the subject’s experiences of the world.

In addition, scholars have also pointed out (see Chapter 3) that domestic work in South Africa is mostly performed by women of colour and that the power relationship that exists between domestic workers and employers is also shaped by class, nationality and citizenship status.

Given this framework, this chapter is divided into four sections, which discuss race, gender, class and nationality. In all four sections, attention is focused on discrimination that is displayed through language, practices and stereotypes against the migrant domestic workers. This is done by exploring how perceptions of, for example, illegality, desperation and docility feed into racist and xenophobic attitudes, which in turn establish and reinforce skewed power relations within the domestic worker’s workplace, i.e. between the employer and employee.

5.2 Experiences shaped by identity

Sections 9 and 10 of the South African Constitution protect the right to equality, non-discrimination and dignity for all people in South Africa. However, scholars such as Anderson (2000), Ally (2009), du Preez et al. (2010) and Griffin (2011) argue that domestic work has been heavily racialised and is reserved for women that fit stereotypes of the racial and social ‘other’ (see Chapter 3). Some of the experiences of the respondents expose the manner in which the intersection of their identities as Zimbabwean women has relegated them to a lower status as workers. Many of them
work in environments in which they are forced to be highly conscious of the ‘inferior’ position that they occupy in relation to their employer. This study has found that employers have subtle ways of establishing and reinforcing the hierarchy between themselves, their families and the domestic worker, often with the domestic worker holding a lower position than the family dog.

As mentioned in Chapter 2, intersectionality suggests that human experiences are shaped by the intersection of different variables that constitute identity. These experiences can be of privilege or subjugation. Likewise, the experiences of migrant domestic workers are shaped by the intersection of their identities as female black migrant domestic workers. All these variables have been relegated to an inferior position, as discussed in both the first and second chapter. Consequently, feminist scholars such as Collins and Chepp (2013:15) who focus on intersectionality describe the simultaneous domination that migrant domestic workers experience because of their identities as the ‘matrix of domination’ (Chapter 3).

Also, intersectionality suggests that it is not always easy to tease out which aspect of one’s identity is at play when experiencing privilege or oppression. Often, it is the simultaneous intersection of all variables of one’s identity that shape one’s experience. Similarly, during this study, it was not always possible to establish which variable of the identity of Zimbabwean domestic workers was more potent in shaping their experiences. However, at times some aspects did appear to play a more pertinent role than others. Nevertheless, it must be kept in mind that despite the dominance of a variable in specific circumstances it is not isolated from the influence of other variables.

5.2.1 Race

The first variable to be discussed is race, which appears to play an important role in shaping the experiences of the respondents. While racism is not always overt, evidence thereof can be found in certain practices that people, in this case, employers, adopt. For instance, five of the respondents interviewed are working in homes where they are not allowed to use the same bathroom as their employer. The domestic worker and the gardener both share a toilet that is outside of the main house. A further five respondents reported to have previously worked for employers that subjected them to the same form of treatment. This means that half of the
respondents have experienced this kind of segregationist treatment. In this study the practice was mainly prevalent among white and Indian employers. These respondents also reported that they were given separate utensils, cups and plates which they use at the workplace. They are also not allowed to wash their cups and plates at the same time that they wash the household dishes; they are expected to wash them separately. This even extends to storage: they are not allowed to keep their cups and plates in the same place as those belonging to the rest of the family. They have to store their cups and plates in the same place where the detergents are kept.

When one compares the treatment the domestic worker gets to that of the family dog, one finds that the family dog is better off. To begin with, the family dog is allowed to roam around any part of the house. Furthermore, the dog is allowed to eat from plates the rest of the family uses. In some cases, the dog might have its own plate, but the domestic worker is allowed to wash its plate at the same time she does the rest of the dishes and stores the plate with the rest of the dishes. Without the employer mentioning it, this implies that the dog holds a higher position to that of the domestic worker. This is what some of the respondents had to say:

No, they tell you when you start working that use this cup, use this plastic plate. You also have to wash them separately and keep them separately (domestic worker 2 from Krugersdorp, interview, 27/06/2015).

You know a maid is not supposed to drink in a cup where they drink, but you are the one who cleans the dishes, they don’t know what you do the whole day to those dishes (domestic worker from Rosettenville, interview, 24/05/2015).

I have my own cup and own teaspoon and plate, for the gardener, they use the same dish that they use for the dogs, they keep it outside, he is from Malawi … they keep our plates separately … They like their dogs better than they like you (domestic worker from Witpoortjie, interview, 03/07/2015).

Other respondents also shared some experiences from their previous jobs:

I have worked for people that wanted me to use my own spoons and plates but I eventually left them. You were not even allowed to touch their fridge. The people I work for now are good people, they allow me to use anything (domestic worker from Dainfern, interview, 24/07/2015).

I once had a part-time job with a white family, I had my own plate, cup and utensils that I was made to keep separate from them family’s plates and
utensils. I was not even supposed to wash them together. Their dogs on the other hand could use the plates the family uses and I would wash the dog’s plates along with the family’s plates (domestic worker 2 from Lindhaven, interview, 28/06/2015).

I am also very lucky with my employers, I am allowed to use any bathroom I want to use. With my previous employer, I had my own bathroom outside. I also had my own teaspoon and plate (domestic worker from Strubens Valley, interview, 19/07/2015).

These segregatory practices speak to the presence of racism and remnants of apartheid practices where black people were perceived to be lower beings than whites (see Chapter 3). Some respondents acknowledged that this treatment is not only restricted to Zimbabweans. Black South African domestic workers are equally likely to be recipients of such prejudicial treatment:

That thing of racism is still surviving, what all the domestic workers go through … and when I am saying this I am saying it on behalf of all domestic workers be it South African be it whatever … my experiences are not worse because I am Zimbabwean, they are worse because of this colour (domestic worker from Rosettenville, interview, 24/06/2015).

Her husband is not nice, he don’t even greet me. They don’t see black people as people (domestic worker 1 from Krugersdorp, interview, 27/06/2015).

**Racist language**

There is also evidence of the remnants of apartheid practices in the language that is still used in the houses of the ‘madam’. Words such as ‘house girl’ and ‘garden boy’ are still used to refer to men and women that work in the domestic service. This speaks to the belittling of their being, equating them to children in relation to the employer; this stereotyping of black people having a child-like mentality is referred to by scholars as the Sambo myth, which is anchored in the ideology used to justify slavery (Jones, 2005:26).

Cock (1980:261) highlights that the idea of the “child-like”, “irresponsible” and “incompetent” black is in essence used to justify the exploitation and ill-treatment to which employers subject their workers. Because the ‘madam’ relegates her worker to the status of a child that is not capable of making rational decisions, the ‘madam’ then assumes the role of the parent that has to guide the child.
Racist attitudes are also subtly expressed in various other ways. Below are some of the statements employers have made to some of the respondents:

When it comes to washing clothes they say “I have to buy you that black soap”, the sunlight, they call it the black soap (domestic worker from Rosettenville, interview, 24/06/2015).

Sometimes my employer asks me “why do black people keep making babies while they are suffering?” (domestic worker from Strubens Valley, interview, 19/06/2015).

In some instances, racial prejudices are even passed down to children. It then becomes very evident in the interactions of the children with their domestic worker that there is an absence of respect between the child and the domestic worker. The power relations in such cases are so skewed that even in relation to a five-year-old child the domestic worker still assumes a position of inferiority and subordination.

Many complain about the children of their employers because they are very rude. When you have to bath them before you knock off, they don’t want. You ask them nicely that they must come and bath and they start saying things like “you are black”. Most domestic workers experience challenges where there are children (domestic worker 1 from Montgomery Park, interview, 06/07/2015).

You know a child, those people are made to grow up with hatred they are made to see that this is black and this is white. A white child told me, a nine-year-old. She spills water on the floor, she does everything, when you say why are you doing like that, [she answers] “you are my maid aren’t you? my mom says you are supposed to do it” (domestic worker from Rosettenville, interview, 24/06/2015).

“I left because the child was very disrespectful. The child was five years old, one day I was reprimanding her and she called me a Kaffir. I left the same day” (domestic worker 2 from Montgomery Park, interview, 06/07/2015).

*Racist stereotypes*

Prejudicial attitudes of employers are also manifested in the manner they view their employees with suspicion, which results from the intersection of racist, classist and xenophobic attitudes and stereotypes that depict certain groups of people as inherently criminal. Some of the respondents complained of being accused by their employers of theft even when they had not stolen anything. Sometimes the
incidences escalated to levels where the employers severely assaulted the domestic worker. This is what some of the respondents had to say:

I once worked for someone in west Krugersdorp, she called the police and accused me of stealing a cell phone. She was paying me R70 per day. Her child had [misplaced] the phone at a friend’s house. They would call the phone, it would ring but no one answered so they accused me. I did not have a bag with me. Said I had hidden it in my panties … They eventually found the phone and did not even apologise (domestic worker 2 from Krugersdorp, interview, 27/06/2015).

If you are a foreigner, everything that goes wrong at work is your fault. Even if people come and rob, it is your fault. They will say it is you that called the robbers, you are the first suspect (domestic worker from Rosettenville, interview, 24/06/2015).

If my employer loses something they accuse me and when they find it, they don’t tell me … I am not one to steal; all I want is to do my job that is it (domestic worker from Cosmo City, interview, 07/07/2015).

They see us as thieves, they don’t see us as people. They believe all black people want to do is stealing. They don’t believe a black person can have a television in their house. One day my boss asked me “do you have a bed? Do you have a television? Is your daughter sleeping with you?” imagine that at this time, they don’t believe that I am also watching Multichoice (domestic worker from Dainfern, interview, 24/07/2015).

While it is evident from the analysis above that race cannot be neatly separated from the nationality and class of the migrant, when making sense of the discrimination that domestic workers are subjected to, it does, however play a significant role.

Racial profiling of employers

Ideas and perceptions play an important role in terms of the relationship employers have with their domestic workers and vice versa. This study has thus far illustrated how the perceptions of the employers shape the manner in which they relate to their domestic workers. This section explores the perceptions that the domestic workers have of their employers and the stereotypical views they have of employers of different races. For instance, more than half of the respondents said that they are unwilling to work for Indian families. This unwillingness is either based on previous experience or from what they have learned from their friends and relatives.
According to these respondents, Indians owned huge houses and lived with too many family members. They then added that for all the work, the Indian family would still pay a small wage. Some of the respondents also had the following to say about Indian employers:

My Indian employer used to work at the bank and some months she wouldn’t pay me and tell me I will get it next month. My friend never got her money. She used to do this so that I don’t leave over the weekend and I always work (domestic worker 1 from Montgomery Park, interview, 06/07/2015).

There was a couple in Florida, Indians. they gave me a room, thank God I went there with my handbag. They were tough those people. They are these people that when you are working they are following you. then I told them that I never worked like that. I was trying to figure out how I am going to leave and where I am going to go (domestic worker 3 from Krugersdorp, interview, 13/07/2015).

I remember this other time, I was doing ironing and I burnt the husband’s [trousers] and he screamed, “I am going to fucken shoot you” ... I said just lock your gate, allow me to work for this thing I have burnt until you go buy another one but don’t shoot me please. Afterwards he was calm and he said he was not going to shoot me ... when I left I did not even get my money, I just left and I swore that I am not going to work for Indians in my entire life (domestic worker 2 from Krugersdorp, interview, 27/06/2015).

With regard to white people, the reactions from respondents were mixed. Some perceived white people as a racist group that has not changed since the apartheid era. The general belief among the respondents was that white people are wealthier than other racial groups. They also believe that whites don’t pay their workers as well as they can, mainly because of their racism and perceptions of black labour being cheap. Others, on the other hand, preferred working for white people as they perceived them to be the best racial group to work for:

White people can welcome poor people and they respect time, they can also give you their things. Indians they give you nothing (domestic worker 2 from Montgomery Park, interview, 06/07/2015).

White people are not nice, they pay you too little money and you do a lot of work ... you have to wash their blankets every week because they threaten you that they will fire you. You live in fear of being fired (domestic worker 2 from Krugersdorp, interview, 27/06/2015).
Respondents also had mixed views when it came to black employers. While some had mutually beneficial relationships with their employers, others did not. There was a general feeling of disappointment among employees that had unpleasant experiences with their black employers because of the expectation that there should be a mutual understanding between themselves and their employers. In the words of some of the respondents:

As a black person, she must know that I have children that I am taking care of that are still in school and she doesn’t want to pay me enough. I should not have to tell her that my children need food. I am a single parent, I am both the dad and the mom (domestic worker from Cosmo City, interview, 07/07/2015).

I worked for a black person for a week, I looked after the baby and I cleaned. I was not allowed to eat or watch TV. I got paid R200 per week. I left after working there for a week. Their washing machine worked but they asked me to wash clothes with my hands (domestic worker 1 from Krugersdorp, interview, 27/06/2015).

They are black people, they are also from Zimbabwe … Sometimes it can be very difficult … if I don’t go anywhere I have to work … there is nothing I can do, I am under her roof (domestic worker 1 from Lindhaven, interview, 18/07/2015).

[I prefer] black people because at least you understand each other. But it also depends on the white people you work for. I once got a job in Sandton, they were good white people, I never came across any challenges and the salary was also good … But I was only filling in for someone and so eventually had to leave (domestic worker 2 from Lindhaven, interview, 28/06/2015).

This section illustrates that although the respondents are often on the receiving end of stereotyping, they too generalise their experiences and stereotype employers in terms of race. Furthermore, it seems evident from the interviews that is not possible to establish which racial groups are the ‘best’ employers.

5.2.2 Gender

The second variable that also plays a role in shaping the experiences of the respondents is gender. It was pointed out in Chapter 3 that the ‘othering’ of migrant domestic workers does not only manifest itself along racial lines, but also along lines of gender. Discrimination on the basis of gender is difficult to identify because it is often very subtle and often masked as what is perceived to be ‘normal’, when it is in
fact discriminatory. For instance, domestic worker 2 from Krugersdorp (interview, 27/06/2015) mentioned how she had been working for her employer for a longer period than the gardener (who also worked half of the hours in comparison to her). According to her:

The gardener is South African, he started working after me, and he earns R150. By 9:00 you find him sleeping. He even leaves at 14:00 but he earns more than me. How does he get an increase and I don’t?

The intersection of the respondent’s race, gender and nationality put her in a position where her labour is perceived to be of lesser value than that of a black South African male, regardless of the fact that he works fewer hours in comparison with the hours that she works. This discrimination is also compounded by the assumption that no skill is required for tasks related to domestic work, since it is what women do ‘naturally’, almost normalising the problematic assumption that domestic work is natural to women and should therefore become relegated to a lower level.

The relationship between domestic workers and their employers has put to question the notion of ‘a common difference’ among women (see Chapter 3). It is evident that women do not all share the same experiences by virtue of their sex or gender. Other aspects of their intersectional identities such as their race and class also contribute towards shaping each one’s experiences. As such, it is evident that asymmetrical power relations exist between domestic workers and their ‘madams’. According to Fish (2006:112), “In contrast to a more universal construction of ‘women’ or of universalised ‘women’s rights’, the institution of domestic work encapsulates the central connections between gender discrimination and other forms of oppression that mutually reinforce one another”.

5.2.3 Class

Class also emerged as a strong variable in shaping the experiences of migrant domestic workers in the workplace. Domestic workers hold a lower social standing in relation to their employers, this is regardless of the employer’s race. This disparity affects the manner in which the two parties relate. Some of the respondents complained about being forced to do demeaning, embarrassing and unnecessary tasks. Once again, the respondents in these cases do not feel empowered to
express their objections. They simply assume the position of servitude to meet the expectations of their employers:

Some of them, if you see the boss is stressed a little bit today, is telling me just wash my panties with your hands. You know panties are panties, anything can happen. If they are having their intimacy and they just leave some of their stuff there for you to clean with your hands (domestic worker from Rosettenville, interview, 24/06/2015).

She uses the dishwasher, but I am not allowed to use it (domestic worker 2 from Krugersdorp, interview, 27/06/2015).

The relegated status of domestic workers also spills over to matters of occupational safety. There are women that work not only under conditions that are difficult with little bargaining power, but the duties they perform are also hazardous to their health, with no insurance covering occupational injuries.

I buy my own gloves, they want you to hold that toilet with your hands. They say “I hate a mop in my house; yes, most white people don’t use mops, they want you to go on your knees … You see my hands, they burn. You have to hold Domestos every day. You know that shower cleaner, it is choking the nose, they don’t give you a mask … they also make you scrub between the tiles with a brush and wipe (domestic worker from Rosettenville, interview, 24/06/2015).

Many of the respondents stressed the need for respect from their employers, and they emphasised that respect and dignity are more valued than money. These are some of the views of the respondents:

For me it is better to work peacefully than to be stressed out and earning millions (domestic worker 2 from Florida, interview, 04/06/2015).

We are equals, my employer helps me, we do work together. I can sit down and watch TV and even forget that I am at work. Other people you are even too scared to talk to them, so I am free with [my employer] (domestic worker 2 from Lindhaven, interview, 28/06/2015).

I feel like an equal … sometimes she helps me clean and I finish quickly. She does the laundry, I just iron. She also makes the beds, she vacuums, sometimes we both clean the carpets (domestic worker from Witpoortjie, interview, 3/07/2015).

Some did not necessarily perceive themselves to be equal to their employers, but other aspects of their relationship made them able to live with the arrangement they have with their employers:
No we are not equals, but they are very supportive and that is why I don’t see many other things. They always ask me, “How is your family? How is your kids?”, that is why I like my employers. That is why I even work for small money (domestic worker from Strubens Valley, interview, 19/06/2015).

The findings illustrate that while the respondents were aware of the wealth disparities between themselves and their employers, which automatically push them into different classes, they believe in the equality of humanity. Therefore, they do not accept domination on the basis of social standing as legitimate. It is frowned upon as much as racism and other forms of domination.

**Family member metaphor**

As has been discussed in previous chapters, the spaces in which domestic workers labour are complex. This study found that both employers and employees use various mechanisms to navigate this complexity. In this section, the ‘family member metaphor’, which is a tool that is often used by employers to hide the inequalities and the asymmetrical relationship between themselves and their workers is explored (see Chapter 3). As has been previously discussed, Anderson (2000) argues that employers use the family member metaphor to mask the inequalities between the employer and the domestic worker. Although employers were not interviewed during this study, the respondents were asked if they felt as though they were part of the family that they worked for. This was done to establish the nature of the relationship employees had with their employer.

Familial feelings are often aroused after a family has had the same domestic worker for prolonged periods. However, the challenge then becomes that the domestic worker can only be ‘part of the family’ contingent on her employers’ acceptance of her as part of the family. In reality, this feeling is not always mutual between the parties involved.

While some employers feel that their domestic workers form part of their family, the domestic worker might not necessarily feel the same way. Some domestic workers view their roles to be that of purely rendering a service to the family and nothing else. Conceptually, it is difficult to imagine how domestic workers could genuinely identify themselves as part of the family when the level of material inequalities between...
themselves and their employer are so stark. For instance, the respondents that worked under the worst and most blatant cases of abuse were less likely to experience familial connections to their employer. In the words of a domestic worker from Rosettenville (interview, 24/06/2015):

Let me tell you, the only relationship you have with your employer is when you clean their house and it smells nice; that is when you feel important. That is when they say “aaaaaaah thanks sweetheart”, they call you sweetheart, not because the sweetheart is for loving you, they are thanking you because you have made [their] lives simpler. We are all used to it now.

I see myself as a worker and they also see [a] worker (domestic worker 1 from Montgomery Park, interview, 06/07/2015).

However, there were also respondents that worked for families where they neither earned good wages, nor enjoyed benefits such as paid maternity leave, adequate vacation leave and so forth. However, because of their dignified treatment and respect from the employers, the stark inequalities and differences between the two parties became blurred. When the respondents were asked if they felt like part of the family, some of the responses were:

Yes, I see myself as part of the family (domestic worker from Dainfern, interview, 24/07/2015).

Yes [I am a member of the family], they help me with all my problems, I even live with my step child. Everything is good where I work (domestic worker from Northern suburbs in Johannesburg, interview, 10/09/2015).

There was another couple in Bryanston, they said to “I don’t want you to be in my house like a domestic worker, I want you to be like my sister” and those people are sweet. If I could get the chance of going there I would go (domestic Worker 3 from Krugersdorp, interview, 13/07/2015).

Therefore, it is evident that the relationships formed between the respondents and their employers vary significantly. While some of the respondents felt as though they are part of the family because of the material gains they enjoy from their employers, others saw their position at the workplace as one of a purely professional arrangement and nothing more.

This section has illustrated that the material inequalities and differences in social standing between employers and their employees are very evident. Moreover, these
differences are illuminated when employers use their position of dominance to subject their domestic workers to unfair treatment. However, as Anderson (2000) argues, employers also have the power to mask these material and power inequalities by using the ‘family member’ metaphor to describe the nature of their relationship with their domestic worker.

5.2.4 Nationality

The final variable to be discussed is that of nationality; it directly speaks to the presence or absence of xenophobia both in and outside the workplace. As already mentioned in the previous chapter, many of the undocumented migrants interviewed are highly conscious of their status of illegality. Most of the respondents that are working without work permits did not believe they are entitled to even the most basic human and labour rights in South Africa. When asked if they believed they have any rights protecting them in South Africa, this is what some of the respondents had to say:

They only want Zimbabweans because they exploit us, because we don't have rights. Even if they give you R300 you don't have papers (domestic worker 1 from Montgomery Park, interview, 06/07/2015).

We must have rights, but I don't have rights … you can see by the way we are treated (domestic worker 2 from Lindhaven, interview, 28/06/2015).

No I don't; in South Africa if you are a foreigner you don't have rights (domestic worker 2 from Montgomery Park, interview, 06/07/2015).

The prevailing idea is that for one to enjoy any human and labour rights in South Africa, one should be living and working legally. This perceived absence of rights and protections forms part of the reasons why migrant women are fast becoming the group that is dominating the domestic work sphere. Unscrupulous employers that deliberately want workers that they can easily exploit without encountering much resistance prefer these workers.

Challenges of migrant illegality

As mentioned in the previous chapter, only six of the respondents had work permits, while only three had Section 22 permits, which also grant them permission to work in the country legally. Thus, the majority of the respondents fell outside these two
categories and were aware of the fact that they are working in the country illegally. Their status of illegality not only shaped how employers perceived and thus treated them, but it also shaped their perceptions.

From the previous chapter it became evident that respondents that are working without permits (illegally) had unpleasant experiences in the workplace when compared to those with permits. For instance, the respondents with permits were more likely to negotiate with their employers on matters such as wages. Consequently, they are the ones that ended up with the employers that paid them wages that met the labour law requirements. Moreover, they were also more likely to end up with employers that grant them access to maternity leave, paid vacation leave and sick leave among other worker benefits. Only one of the nine permit holders interviewed was paid below the minimum wage, while two of the permit holders said they were “very happy” with their wages.

However, it is also important to note that not everything was perfect for the respondents with permits. For instance, only two were registered with the Department of Labour and enjoyed UIF benefits, and two others had signed a contract with their employers prior to commencing their jobs. Still, when comparing their lived experiences with those of the illegal migrant domestic workers, the differences are significant.

For instance, domestic worker 1 from Florida, who is also working in the country illegally, expressed her satisfaction with her employer. When asked which benefits she enjoys at work, she enthusiastically answered “I get everything, they are 100 per cent”. However, while in the respondent’s view she got “everything”, she was not registered with the Department of Labour, she had no UIF benefits and she did not receive payslips. Her salary was exactly on par with the minimum wage as set out by law. It is evident that she did not feel entitled to anything more than what she was receiving at the time.

At the opposite end of the spectrum is domestic worker 3 from Krugersdorp, with a permit. She felt empowered enough to negotiate her work conditions with her employers prior to commencing work and as a result ended up with some of the best employment experiences. According to her:
I worked for these two sisters and they taught me, if I am not happy with something, I must talk. They gave me a contract to sign to say if something happens to me while I am at work, she is responsible. Last time I went to the dentist and she paid more than R2000.00 for me. They would borrow me R5000 whenever I borrowed it and they would only deduct R1000 and then give me the rest ... at the end of the day, these people they need us, they can't do what we do for them. (domestic worker 3 from Krugersdorp, interview 13/07/2015).

Evidence suggests that migrant workers without official documents that regularise their stay in the country are more vulnerable to ending up in exploitative and abusive working environments. However, of concern is the increased likelihood of them remaining in such conditions for protracted periods because of the fear that they may never get anything better. Domestic worker 2 from Krugersdorp (interview, 27/06/2015), for example, said that she was told by her employer that by law, she was not allowed to give her a salary increase since she was an illegal immigrant. When asked what her reaction was, she answered:

Well, I don't have the proper documents so there is nothing I can really do. I am scared because if I get fired, what will I eat? My husband does not work.

A respondent from Auckland Park (interview, 26/07/2015) maintains it is not simply a matter of undocumented migrants having unfounded insecurities.

Because if you speak to your boss, your boss will tell you that remember you don't have a permit, you are here illegally I will call the police for you. I have seen so many people been sent to Lindela because of that ... they say you want more money, you want me to pay you more money? Wait here, And the next thing you wake up and you are at Lindela there.

While it was evident that having a permit is very empowering to the workers, they were also concerned that their empowerment would be short-lived; their concern was what would happen once their Zimbabwean Special Dispensation permits expire in 2017. According to the domestic worker from Auckland Park (interview, 26/07/2015):

Yes I came to South Africa on a passport, then I started to look for work and I got work. So there was that thing to say those who want permits must come. I got a letter from my work and I got a permit, another one expired so I got another one now. Although they say they are not going to renew it anymore. But I know God will make a way, who will they throw us to? And we have kids back home, every time I get money I send it back home.
There seems to be a general awareness among respondents of the power that is wielded by having a work permit. According to a domestic worker that works in the Northern suburbs in Johannesburg, “those permits, we like them because they protect us” (interview, 10/09/2015). However, the permit is like a double-edged sword: while on the one hand it affords Zimbabwean domestic workers protection as workers, it also makes them undesirable to South African employers who want to circumvent labour laws. In the words of the domestic worker from Rosettenville (interview, 24/06/2015):

That permit is giving us trouble because they [the employers] are saying you can easily go back to the South African government and report me, you are almost the same as them [South Africans]. So now they cannot give you less money, you need more money, you demand for more money. The only people that are making us go down are the Malawians. If you see a Malawian maid, they can take even R90.00 a day, if you see a Zambian maid, they can take R100.00, I will tell them no. You see this permit, it is protecting me and if you do anything wrong, I will run to the CCMA.

Still, all the respondents without permits expressed a desire to have one. Not only do permits serve the purpose of protecting the domestic workers, they also afford the migrant workers an opportunity to seek employment in other sectors deemed better than domestic work. According to a domestic worker 1 from Lindhaven (interview, 18/07/2015):

Those with permits have nice jobs, they work at the factories. I have also had interviews, but they want a permit and that is where I fail. I don’t have money to travel to go apply for the permit.

Once again, it is important to emphasise that because of the simultaneous intersection of race, class, gender and nationality, it was not always possible to neatly separate the reasons why respondents felt that they did not have rights.

**Migrant illegality: a compliance tool**

Evidence from the interviews conducted suggests that there seems to be a larger preference among South African employers for migrant domestic workers than ever before. Although there may be various reasons for this preference (which requires a
study of its own), it is evident that some employers prefer migrant workers because they can be easily exploited. In the words of one domestic worker:

They only want Zimbabweans because they exploit us, because we don’t have rights (domestic worker 1 from Montgomery Park, interview, 06/07/2015).

This section discusses the manner in which some employers use the illegal status of their domestic workers to ensure compliance and loyalty. Such employers prey on the fears that illegal migrants have of being identified by the authorities. This has been exacerbated by the nation-wide launch of Operation Fiela. Operation Fiela (which directly translates to “Operation Sweep Clean”) is a nation-wide police operation that was undertaken in response to the 2015 xenophobic attacks mentioned above. According to the Minister in the Presidency Jeff Radebe, Operation Fiela is an “operation to rid our country of illegal weapons, drug dens, prostitution rings and other illegal activities” (News 24, 31/07/2015). This operation was heavily criticised by civil society organisations, which argued that it merely contributed to prevailing attitudes that perceive migrants to be the key contributors to criminal activity in the country. In September 2015, Radebe announced that since the beginning of Operation Fiela, over 9 000 arrests had been made and over 150 000 undocumented migrants had be repatriated to their countries of origin (Mail and Guardian, 7/09/2015).

In light of an increasingly volatile environment, this is what some of the respondents had to say about their safety and security:

Operation Fiela made us very uncomfortable, we live in fear (domestic worker 1 from Krugersdorp, interview, 27/06/2015).

The only thing I fear is Operation Fiela, I fear it will get to my workplace (domestic worker from Witpoortjie, interview, 03/07/2015).

I like these people [my employers], I can’t leave them, they protect me, I want to stay with them (domestic worker 1 from Florida, interview, 04/06/2015).

The statements above expose the level of vulnerability that migrant domestic workers experience in both their workplaces and in society. Migrant domestic workers depend heavily on their employers for not only employment, sometimes
shelter and general protection from government officials. Their wellbeing is constantly dependent on the mercy of the people around them.

However, some employers abuse this vulnerability to suit their own ends. Four of the respondents that participated in this study mentioned how their previous employers had threatened that they would call police officials to have them deported whenever they raised pertinent issues concerning their working conditions. Some of the respondents were still with employers that used their migrancy status to legitimate ill-treatment, using government officials as a means of instilling fear and insecurities into their workers. In the words of two respondents:

I was with them for close to two months and then I said no I can’t take it anymore and I left them. They tried to call me but I told them [I am quitting] after I left because they were both police, so I was scared of them now. If I told them I am leaving what if they lock me up? (domestic worker 3 from Krugersdorp, interview, 13/07/2015)

I had a friend … she is being paid R120, then when she asked the boss to give her a raise, then the boss threatened to call the authorities and tell her that “you don’t have papers”. The other people I heard said [their employers] take their passports, the employers they are taking people’s passports then withhold them. Even if you get another good job, you can’t go (domestic worker from Rosettenville, interview, 24/06/2015).

When the respondents were asked why in their view they think their employers specifically wanted migrant domestic workers, their views varied. However, a vast majority of the respondents argued that the reason ties to the fact that they are foreigners from a poverty-stricken country and are therefore regarded as cheap labour. Their perceived desperation and need to maintain employment makes them vulnerable to exploitation. They believed that their employers were very much aware of their desperation for employment and abused this knowledge.

Some employers will ask you if you are from Zimbabwe and [if] you say yes, they automatically want to take chances. But when you have a permit or an ID [South African] you can speak up if you feel like you are not getting the respect you deserve. I soon as I produce my ID everything has to work accordingly (domestic worker from Northern suburbs in Johannesburg, interview, 10/09/2015).

When my employer hired me, I was working in the streets giving people pamphlets. Then, she told a guy I worked with that they want me to come work for them. Before that they had a South African working for them, she
then left and they specifically wanted someone from Zimbabwe … they are taking advantage because I am from Zimbabwe (domestic worker 2 from Krugersdorp, interview, 27/06/2015).

I think if I was South African, my experience would be different, they would treat me better. The black people even say, “please help me find someone from Zimbabwe”, they want to exploit us, they want to use us (domestic worker 2 from Montgomery Park, interview, 06/07/2015).

Another popular reason cited by respondents was that employers claim to not hire South African domestic workers because they are lazy. Zimbabweans, on the other hand, are perceived to be hard workers. However, not all respondents believed this narrative; some viewed it with great suspicion. They felt that employers use this narrative to conceal the real reasons why they wanted to hire Zimbabweans:

They don’t want South African maids, they are protected by the law and by the government … when you go to work, a white man tells me … you know you are too expensive; there are people getting R80.00 a day (domestic worker from Strubens Valley, interview, 19/06/2015).

Yes it is true, some say South Africans they are lazy … Maybe it is not true, they want foreigners so that they can give him little money. They know you coming from your home to work, you need a job (domestic worker from Rosettenville, interview, 24/06/2015).

Still, some of the respondents bought into the narrative of the lazy South African domestic worker. However, it was evident that the myth was exacerbated by the belief that there is nothing pressurising South Africans to work hard to in order to maintain their jobs. Zimbabweans, on the other hand, have to work extra hard for their employers to keep them for as long as they still need a job. There is a perception among respondents that Zimbabweans are dispensable.

[Zimbabweans] are hard workers, they are honest … if someone says move, where will I go? So I am supposed to work hard so you will be satisfied (domestic worker 1 from Florida, interview, 04/06/2015).

Employers fear South Africans because they are not like people from Zimbabwe. Zimbabweans are poor, they will never easily leave a job. South Africans can speak up for themselves, Zimbabweans will not do that because they need the job (domestic worker 2 from Krugersdorp, interview, 27/06/2015).

Many employers prefer Zimbabweans because they know we work hard and we are good people … they are willing to take you without an ID and a
passport. My current employers know that I don’t have an ID and a passport (domestic worker 1 from Krugersdorp, interview, 27/06/2015).

However, it is not all employers that deliberately only hired Zimbabwean domestic workers. Some respondents believed their employers did not care which nationality they belonged to. One of the respondents worked for an employer that did not want Zimbabwean domestic workers and was only willing to hire locals. The respondent then had to conceal her real identity from her employer:

No they don’t want people from Zimbabwe. My employer told me that if I am from Zimbabwe just let me know now. So I told her that I am from the Eastern Cape. She says she once had someone from Zimbabwe work for her and that person stole from her and left the job … the gardener told me that the lady that left used to get R70.00, she was from Malawi (domestic worker from Witpoortjie, interview, 03/07/2015).

The above discussion illustrates how some of the respondents exist in a paradoxical space in which on the one hand they need their employer’s protection from the outside world to ensure their continued stay and survival in South Africa, and on the other hand, their employers abuse this dependence to suit their own ends. This section has illustrated clearly how migrant illegality is used by some to ensure that they can continue to secure cheap labour without being reported to government officials for contravening labour laws.

**Xenophobic discrimination**

In light of the 2008 and 2015 xenophobic attacks, many scholars such as Lefko-Everett (2010) have documented how xenophobic attitudes affect the lives of migrants and refugees in South Africa. In order to escape xenophobic discrimination, Lefko-Everett (2010) maintains that migrant women try to assimilate as a survival strategy. In order to assimilate, migrant women even go as far as changing the way they dress to look more South African (Lefko-Everett, 2010:280).

Crush and Tawodzera (2014) wrote a compelling article on xenophobia in public health institutions in South Africa. They argue that South African public officials such as teachers and health care professionals are active agents in co-enforcing South Africa’s immigration control machinery, which is generally hostile to African immigrants. They have the power to deny the services they render to migrants,
especially those that are undocumented. In some instances, they charge migrants
exorbitant fees for the public services, using pricing as a tool to keep ‘foreigners’
away. The justification evoked for such discriminatory actions is that public services
intended for South African nationals should not be abused by ‘illegal foreigners’
(Crush & Tawodzera, 656:2014).

The respondents were asked whether they had experienced xenophobia in the past.
It was interesting to note how the respondents conceptualised xenophobia. While
many of them were aware of the different treatment they receive from the police,
nurses in clinics and their employers, they completely disassociated this from
xenophobic attitudes. Many associated xenophobia with the presence of a mob
violently attacking migrants and burning them to death. They link xenophobia with
the images they saw on TV during the 2008 and 2015 xenophobic attacks.

No I have not experienced it. But when I see others experiencing it I fear it.
But my landlord sounds xenophobic, she always says ugly thing about
foreigners. I have had to hide my identity from her (domestic worker from
Strubens Valley, interview, 19/06/2015).

No I have only heard of it but I have not experienced it myself. I only saw it
on TV (domestic worker from Cosmo City, interview, 07/07/2015).

No I only see it on TV. I live in a safe place. The people we live with don’t
want xenophobia (domestic worker 1 from Lindhaven, interview,
18/07/2015).

The interviewer then had to ask if the respondents had ever experienced
discriminatory treatment because of their identity as Zimbabwean national. It was
only then that some of the respondents were able to share anecdotes of when their
identity as Zimbabweans was used to justify differential treatment or suspicion.

Were we live, if someone from Mozambique steals, they say it is the
Zimbabweans (domestic worker 2 from Montgomery Park, interview,
06/07/2015).

Sometimes yes it happens, but my neighbours have never treated me in
that manner. But other people can treat you in a strange manner because
of who you are. They use words like “amakwerekwere” to me (domestic
worker 1 from Montgomery Park, interview, 06/07/2015).
The respondents also experienced xenophobic attitudes in health care institutions such as clinics and hospitals. Besides the illegality and unconstitutionality of the actions of the public officials, their status of migrancy made them feel disempowered to report the public officials to a higher body. These are some of the experiences shared by the respondents:

They told us, you are not paying us the tax, Mugabe is not paying us more money so we can do what we want to do (domestic worker from Rosettenville, interview, 24/06/2015).

At the clinic they will ask you why you don’t have a passport and an ID, how come? But they treated me eventually (domestic worker 1 from Krugersdorp, interview, 27/06/2015).

I paid when my baby was sick. I owe over R1500 at Leratong Hospital. My baby was sick and slept in hospital for two days. They said foreigners must pay when getting health care in South Africa because South Africans also pay when they are in outside countries (domestic worker 2 from Lindhaven, interview, 28/06/2015).

As a survivalist strategy (as discussed in Chapter 2), some respondents deliberately choose to conceal their identities. They learnt South African languages such as Xhosa and Setswana to be able to pass as South African. Once the migrant has learnt the languages and the South African way of life, they easily blend in.

I blend in, people cannot identify me as Zimbabwean, I speak isiZulu, Setswana. It does not affect me. I don’t have any problems at all (domestic worker from Northern suburbs in Johannesburg, interview 10/09/2015).

I survive a lot because I live with a Xhosa man, I can pass as Xhosa because I speak the language very well (domestic worker from Witpoortjie, interview, 03/07/2015).

However, some of the respondents have never had to conceal their true identities and feel they have never experienced any discrimination on the basis of their identity.

Everything is 100 per cent, especially with me. I am going to the clinic you see now I have got rashes … now I have got an appointment for Tuesday. You see this clinic, I like this clinic (domestic worker from Jukskei Park, interview, 13/07/2015).

The discussion above illustrates that the majority of respondents have experienced discrimination on the basis of their nationality in one form or another. While for some
it is manifested in the low wages they receive from their employers due to their ‘migrant illegality’, others experience it in completely different contexts such hospitals when they are made to pay unnecessary fees because of their nationality. Therefore, it is evident that the nationality of the respondents does in fact shape their experiences significantly.

5.3 Conclusions

The aim of this chapter was to establish how the intersection of race, class, gender and nationality in Zimbabwean domestic workers shapes their experiences in the workplace and in the broader society. In doing so, the chapter was divided into four sections in which race, class, gender and nationality were unpacked, along with the manner in which each variable privileges or harms the respondent.

Overall, race seems to play a significant role in shaping the experiences of the respondents because many expressed that they are discriminated against on the basis of their race. While one cannot quantify racism, it is evident in the language used by employers when referring to domestic workers, their exclusion from facilities such as the family bathroom, the use of their own plates and utensils, and in the overt racism where words such as ‘kaffir’ are used, indicating a direct attack on the domestic worker’s race. Racism is also evident in the stereotypical attitudes held by employers: an example is the general suspicion with which employers view domestic workers. The respondents, on the other hand, also had preferences when it came to which racial group to work for, with Indian employers being identified as the least desirable group to work. There were mixed feelings when it came to black and white employers.

Discrimination on the basis of gender is also very difficult to quantify, often manifesting itself in subtle forms. In spaces of domestic work, it is evident in the manner in which the work performed by women is perceived to be unskilled and of lower value. As a result, women are more likely to be paid less than their male counterparts who work as gardeners, even when the gardener works fewer hours a day than the domestic worker.
Classism is evident in the manner in which in some instances there is a general absence of respect and dignified treatment of Zimbabwean domestic workers. According to the respondents, they are not respected because of the work they perform as domestic workers. This is also reflected in the demeaning and embarrassing tasks they had to do. However, this was not the case with all the respondents. Some work in environments where there is mutual respect between employer and employee regardless of the difference in social standing.

The last variable and potentially the most potent in shaping the experiences of migrant domestic workers (especially those working in South Africa illegally) is nationality. Discrimination on the basis of nationality, also known as xenophobia, manifests itself in various forms such as abuse, exploitation, the use of deportation threats by employers to ensure compliance from their workers or the use of insults such as ‘makwerekwere’ to refer to migrants. For instance, a significant proportion of the respondents believe that the reason they are paid low wages is mainly because they are migrant workers and therefore perceived to be desperate.

Nationality is also probably the most debilitating aspect of their identity because it was found to disempower migrant workers from seeking recourse from the police or any other government body because of the perpetual fear of being identified. The 2008 and 2015 xenophobic attacks, along with Operation Fiela, have exacerbated the fear migrants have of public exposure and they therefore prefer to live in isolation, rendering them powerless to fend for themselves during cases of abuse and discrimination.

Therefore, this chapter provides evidence that the intersectional identity of the respondents plays a key role in shaping their experiences and positionality in relation to their employers and the broader society.
CHAPTER 6

SUMMARY OF MAIN FINDINGS AND CONCLUSION

6.1 Aim, scope of study and methodology

Political and economic instability in Zimbabwe in the late 1990s has resulted in the migration of a significant proportion of Zimbabwean women to South Africa in search of a better life. However, migrant women in general, have over the years mainly found employment in the informal sector such as domestic work in South Africa which, until 2002 was not only unregulated, but was characterised by abuse and exploitation.

The aim of this study was twofold: firstly, to establish whether employers of Zimbabwean migrant domestic workers in Johannesburg adhere to the labour legislation that protects domestic workers, (such as the Sectoral Determination 7 of domestic workers) and, secondly, whether the race, class, gender and nationality of the respondents have a bearing on the kind of treatment they receive at work and society in general. Put differently, to establish the lived experience of Zimbabwean domestic workers. The study focused on Zimbabwean domestic workers because Zimbabweans account for the largest number of migrants present in South Africa, this automatically puts them in a unique position in relation to other migrants. They are more likely to be persecuted for their heavy presence in South Africa, as was the case in the 2008 xenophobic attacks.

In addition to an analysis of both primary and secondary sources, 20 semi-structured personal interviews were conducted with Zimbabwean domestic workers working in Johannesburg. The respondents were chosen by means of the snowballing technique. Since it is a qualitative study, 20 interviews were regarded as sufficient. In addition, information provided by respondents became somewhat repetitive after having interviewed around 11 workers. All the interviews were conducted anonymously. Most of these took place in neutral places such as parks and places of worship, while five were telephonic interviews at the request of the respondents.
The study was guided by three analytical frameworks – firstly, by literature on migrant domestic workers that highlighted the challenges that migrant domestic workers experience, which included exploitation, skewed power relations and racial and other forms of prejudice. This was found to be true especially in contexts where there was little or no regulation of domestic work by the government.

The second aspect of the analytical framework was legislation pertaining to domestic workers. This included aspects such as their working conditions (e.g. minimum wages, adequate leave, working hours and job descriptions); health and safety requirements (occupational safety requirements and access to hospital care).

Lastly, intersectionality was used as a methodological paradigm that aided in establishing how different variables of one's identity (i.e. gender, race, and nationality) intersect in creating unique lived experiences for the subject, who in the case of this study was a Zimbabwean domestic worker.

Since scholarly contributions on migration and intersectionality have highlighted nationality and migrant legality as important factors that contribute in shaping the lived experiences of migrant workers, it was therefore important to determine the legal status of the respondents. The purpose was to establish whether legal migrants secured better treatment in the workplace compared to those working illegally or not. Of the 20 respondents that participated in this study, six have work permits and three use Section 22 permits, which permit them to be employed. This means that nine of the respondents are working legally in South Africa. Furthermore, 10 of the respondents used passports to enter the country as tourists and sought employment illegally thereafter. Only one of the respondents entered the country using clandestine routes and was therefore living and working in South Africa illegally. From the 20 interviews, it is evident that while migrant women use various methods to enter the country and to regularise their stay, however partially, there is a bigger preference for official methods of entry as opposed to clandestine methods.

6.2 Key findings of the study

6.2.1 Adherence to labour laws
This study found that the employers of Zimbabwean domestic workers fall short in adhering to numerous requirements set out in the labour laws pertaining to domestic workers. The most common contravention pertains to the registration of workers with the Department of Labour. Relatively, the most adhered-to aspects are those pertaining to working hours and minimum wages. Below is a summary of the findings on each of the aspects investigated during this study. It must be emphasised that the figures provided in terms of adherence or lack thereof to a specific labour requirement are merely provided to give some indication of how prevalent a particular issue is, even with such a small number of women interviewed. Moreover, it provides a spectrum of the issues that migrant domestic workers still have to deal with.

**Written particulars of employment**

Written particulars of employment refer to aspects such as the registration of workers with the Department of Labour and the drafting of contracts and job descriptions for employees. This study found that the provisions pertaining to the registration of workers and unemployment insurance benefits are the least complied with. While the Unemployment Insurance Act stipulates that employers are required to have their workers registered with the Department of Labour and make monthly contributions towards their Unemployment Insurance Fund, only two of the 20 respondents are registered. Moreover, while Sectoral Determination 7 stipulates that employers ought to draft contracts of employment for their employees to sign, only four of the respondents signed a contract before commencing work. Furthermore, none of the 20 respondents were given job descriptions, and most simply did “everything”.

**Leave**

Section 19 of the Sectoral Determination 7 makes provision for employers to grant their domestic workers a minimum of three weeks annual leave with full pay. However, the study found that only eight out of 20 respondents regularly receive paid annual leave. The rest of the respondents work on a ‘no work, no pay’ basis, which means that they only get paid for days in which they work. This principle also applies on days when the domestic worker is sick and on public holidays. The respondents
do not enjoy maternity leave benefits, with only two of the respondents claiming to have access to paid maternity leave. The rest of the respondents have to make arrangements for someone to ‘fill in’ for them should they fall pregnant or they could otherwise lose their jobs. This is an area on concern because domestic work is mainly done by women.

*Working hours*

Although compliance with the prescribed working hours in terms of Sectoral Determination 7 is comparatively better than the compliance with other aspects of the labour laws, 20 per cent of respondents are still not paid the minimum wage and work beyond the prescribed hours in terms of Sectoral Determination 7. However, the study found that ‘live-in’ domestic workers are the ones more likely to work extended hours because of the 24/7 access their employers have to them. All four of the respondents that work beyond the prescribed times are ‘live-in’ domestic workers and are not paid extra for the time they work. It has been found that the working hours for some domestic workers can be as long as 16 hours per day.

*Wages and deductions*

Wages are a crucial aspect in the working lives of migrant domestic workers because remuneration is the primary reason for seeking employment. Of the 20 respondents (both full-time and casual workers), the study found that nearly half (eight) are paid below the legally stipulated minimum. Furthermore, only five of the respondents regularly receive annual bonuses. In some instances, employers supplement the wages they give to their workers by buying clothes for their children or groceries, or they give them old furniture. Sometimes, employers even send their domestic workers to private hospitals when they fall sick. The respondents viewed the gifts with great suspicion because they rarely translated into a salary increase. Monetary compensation is very important to migrant domestic workers because they regularly send remittances to their families. Of the 20 migrant domestic workers interviewed, 18 send money on a monthly basis to their families, often sacrificing their own comfort for the sake of that of their families. For this reason, there is often a disjuncture between the level of success the family of a migrant worker believes the migrant has achieved in South Africa and the reality. South Africa is portrayed to
many would-be migrants as a land of milk and honey, a land in which success is inevitable. This puts migrant workers under pressure to retain their jobs as long as possible until something better emerges in order to maintain the façade of ‘the good life’ in South Africa.

Conflict resolution mechanisms

Although institutions such as the CCMA exist to resolve work-related disputes in cases of abuse and exploitation in the workplace, the respondents, especially those without work permits, viewed it with great suspicion. The general belief among the respondents was that the CCMA mainly caters to the needs of South African workers and that ‘foreigners’ would be deported if they came forward with work-related grievances. However, the case of Discovery Health Limited v the Commission for Conciliation, Mediation and Arbitration and Others proves that this suspicion is unfounded and that even illegal migrant workers are protected by labour statutes and can therefore approach the CCMA in times of work-related disputes. This therefore means that the grievances of migrant domestic workers go unreported. Instead, they choose to adopt a ‘mask of deference’ and avoid being confrontational towards their employers.

6.2.2 Intersecting identities shaping experiences in the workplace

The second part of the study sought to establish the role of the intersecting identities of the respondents in shaping their experiences in the workplace and the broader society. It became evident that domestic work is highly racialised and reserved for women that fit stereotypes of racial and social ‘others’. The study found that the labour of the migrant domestic workers is reduced to subordination, which results from the intersection of their race, gender, class and nationality.

Like many other forms of discrimination, racism is difficult to quantify. However, the evidence thereof is found in language and practices. Similarly, this study found evidence of racist behaviour in the language and treatment of migrant domestic workers, sometimes subtle and in some instances overt. One of the most overt cases of racism in the workplace is the remnants of apartheid-era practices where domestic workers were expected to eat from separate plates, cups and utensils from
those of the rest of the family. The study also found that some of the domestic workers had to use a separate toilet from the one used by the family. Half of the respondents interviewed had experienced this sort of treatment in some point of their career and a quarter still worked under such conditions.

Furthermore, the language used in the domestic work sphere is discriminatory in nature, with words such as ‘house girl’ and ‘garden boy’ still being used to refer to adults who are in some instances older than the employers themselves. The practice of referring to adults as ‘boys’ and ‘girls’ is anchored in racist ideology that was used to justify slavery. It suggests that black people are childlike and never really fully develop into adults who are capable of reason. In other cases, the racism is so overt that words like ‘kaffir’ are used to refer to the domestic workers.

On the other hand, it was also evident that the treatment the respondents received from their employers created stereotypes in the heads of the employees of how different races behave. Their experiences with one or two employers of the same race would then be extrapolated to mean that the entire race acted in that manner, thus creating somewhat prejudicial attitudes towards that group. In the perception of the respondents, some racial groups treated their domestic workers better than others; they also found that these variations also extend to aspects such as wages and so forth. This was either based on experience or anecdotes from fellow domestic workers.

The second variable of identity that shapes the experiences of the migrant domestic workers in the workplace is gender. Though discrimination on the basis of gender is also difficult to quantify, it often manifests in subtle forms. This study found that work performed by women is perceived to be unskilled and therefore lower in prestige. Women are more likely to be paid less than their male counterparts who work as gardeners in the same spaces, even when the gardener works fewer hours per day than the domestic worker, as mentioned by one of the respondents. While women in generally are seen as ‘lesser’, women of colour are worse off because they are not only discriminated against on the basis of the gender but also their race.

Some of the respondents saw their social standing (class) as one of the key determinants of the type of treatment they would get from their employers – the more desperate for employment one is perceived to be, the more likely it is that the
employer will take advantage of them. Some respondents perceived their relations with their employer (in terms of a lack of respect on the part of their employers) as mainly motivated by the difference in social standing between the two parties. For example, in this regard, respondents cited the fact that they are made to perform demeaning and embarrassing tasks such as washing their employer’s panties by hand or washing the family dog against their will. The respondents perceived their role as being closer to that of servitude as opposed to that of an employee. However, this was not the case with all the respondents; some highlighted the mutual respect that existed between them and their employer, regardless of the difference in their social standing.

Nationality was the last variable of identity that was explored; it was also the most potent of all the variables in shaping the experiences of migrant domestic workers, especially those working in South Africa illegally. This study found that discrimination on the basis of nationality, otherwise known as xenophobia, not only affects migrant domestic workers in the workplace, but society at large. Illegal migrants are worse off because not only do they live in hiding to avoid xenophobic discrimination, but they also hide from government identification, which could potentially result in deportation. The fear of the ‘outside world’ was also clearly manifested in the general suspicion with which the respondents viewed government institutions such as the CCMA and the South African Police Service. However, the respondents felt confident to go to clinics and hospitals when the need arose without fearing the risk of deportation.

Though illegal migrants in particular try to steer clear of situations which could increase their vulnerability to deportation, the possibility of getting deported is a reality that they are constantly faced with. The study found that there are networks to which some of the respondents belonged which would assist in the event they were apprehended and deported. The arrangements vary: others get people to try to pay bribes to officials to ensure their release. Some make arrangements to get their passports sent to them once they are back in Zimbabwe so that they can re-enter South Africa. These networks are coping strategies that migrants employ to survive.

The study also found that migrant illegality was in some instances used as a tool by employers to ensure compliance from their domestic workers. Some employers would threaten to call the authorities when their domestic worker went against their
authority. This reiterates claims by different scholars on migration that employers prefer this group because of their increased vulnerability and heavy dependence on the employer for safety and protection from the authorities. It was also evident that besides the stereotypes that paint South African domestic workers as lazy and Zimbabweans as hard-working, at the heart of the preference for this group of workers lay the fact that migrant illegality is used as a tool to ensure compliance by employers. Some employers even use their employee’s nationality to justify the low wages they give them.

Furthermore, the study found that a majority of the respondents conceptualised xenophobia in terms of the images they saw on television of masses violently attacking immigrants. They failed to link it to the day-to-day discriminatory attitudes that they may encounter due to their identity as foreign nationals; many did experience xenophobia in one way or another whether in the workplace, in society or at the hospital and clinic. Though the respondents did not experience physical attacks related to xenophobia (such as those during 2008 and 2015) they have experienced other forms of xenophobia such as verbal abuses – i.e. being called names by South Africans such as ‘amakwerekwere’ which is a derogatory manner of referring to African immigrants.

It was also found that government officials such as nurses sometimes use their positions to entrench xenophobic attitudes in society by sometimes denying migrants services or making them pay exorbitant fees for government services that would be very affordable under normal circumstances. Even so, some of the respondents had never experienced overt xenophobia since their arrival in South Africa. Nevertheless, the pressure to try and ‘blend in’ as much as possible to avoid identification as foreign was consistently experienced by all the respondents, whether this was done to avoid xenophobic discrimination at the hands of society, the police or Home Affairs officials.

6.3 Concluding remarks

In conclusion, this study has found that while laws such as Sectoral Determination 7 and the Unemployment Insurance Act exist to protect the rights of domestic workers, they do not reach migrant domestic workers. In addition, migrant domestic workers
also endure unfair treatment as a result of discrimination on the basis of their race, gender, class and nationality. The failure of labour laws to protect this group of workers has made them increasingly vulnerable to abusive and exploitative employers who only employ migrants in order to take advantage of their migrancy status to circumvent labour laws and do not fulfil their obligations as employers.
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