

Constitutionality of Gender Injustice at the Home Front: Domestic Economic Exploitation of Women and Girls in Africa: A Comparative study between Ghana, Nigeria and South Africa

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Abstract

In many traditional African cultures, gendered roles exist to subdue women and girls to manage the household chores. With modernisation and economic realisation, where many women have to combine work with household chores while girls have to combine school with the chores or stay out of school to fulfil their 'domestic' roles. The effect of the roles in the lives of women is mainly visible in terms of slow progress economically when compared with their male counterparts. Unfortunately, the domestic work being carried out by women and girls in Africa is not monetised, as compared with what obtains in India, and does not contribute to the nation's gross domestic product (GDP). In essence, these works go unaccounted for domestically. When the work is compared to what is being done by paid domestic helps, it is apparent that a lot of economic activities are not accounted for within households. This article adopts a socio-legal method, which seeks to combine the legal and institutional frameworks with the existing available data, to investigate the constitutional protection of women and girls from domestic economic exploitation. The article relies on secondary data on the remuneration of domestic helps in select African countries and the nature of work they carry out as well as literature on uncompensated domestic chores carried out by an average woman and girl in the same country. The article concludes by recommending constitutional protection from domestic economic exploitation as a way of contributing to gender equality.

Key words: Constitution, Africa, gender injustice, domestic exploitation, women, girls, economic exploitation.

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1. Introduction

Traditionally in most patrilineal cultures across Africa, Asia and Europe, domestic work has been ascribed to women and girls as a result of which several women and girls engage in unpaid domestic work to the extent that women have been said to account for over 75% of unpaid domestic work.² With an average of 4.5 hours devoted to unpaid domestic work daily, women, especially those in other forms of paid work, are at a disadvantage in terms of the earning capacity when compared with their male counterparts. Unpaid work has been defined as all non-system of national accounts (SNA) productive activities including unpaid domestic activities for one's own personal use, unpaid caregiving services to own household members and unpaid community services to other households.³ Unpaid work also refers to all unremunerated services rendered to a household's members, such as personal care, housework, and volunteer community work.⁴ It therefore means that any domestic work which falls within the category of work that a person could be paid to do qualifies as unpaid domestic work and when a person does such work without being paid as a result of his/her position in a family or community, then, such person is said to engage in unpaid domestic work. The nature of unpaid domestic work varies across Africa and cuts across caring for children, family members with disabilities, the ill and the elderly, cooking for members of the household and community members, fetching water and firewood, washing clothes, house cleaning, to mention a few.⁵ It has been reported that the most typical unpaid caregiver in Africa is a woman between the ages of 15 and 54 who has little financial means, several children, a low level of education, and frequently health issues or disabilities.⁶ She also works for extremely low wages, primarily in the informal sector, and gets little to no formal financial backing.⁷

Over the years, as women take more active roles in employment and economic activities, there was an increase in formal employment of domestic workers.⁸ Across the world, paid domestic work has become a significant source of paid labour with over a hundred million of domestic work

² UN Women, 'Unpaid Care and Domestic Work: Issues and Suggestions for Viet Nam' (UN Women 2016) <<https://www2.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2017/01/unpaid-care-and-domestic-work-en.pdf?la=en&vs=435>> accessed 23 January 2022.

³ Jacques Charmes, 'The Unpaid Care Work and the Labour Market. An analysis of time use data based on the latest World Compilation of Time-use Surveys' (ILO: Switzerland 2019) 8.

⁴ Diane Elson, 'Progress of the World's Women 2000' (United Nations Development Fund for Women 2000) UNIFEM Biennial Report.

⁵ Oxfam, 'Addressing Unpaid Care and Domestic Work for a Gender-Equal and Inclusive Kenya' (Oxfam) <<https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621179/bn-we-care-ucdw-kenya-130421-en.pdf;jsessionid=B0D63BE8D8A3BE9241FF63FAEA17A265?sequence=1>> accessed 22 June 2022.

⁶ International Labour Organization, 'ILO Calls for Urgent Action to Prevent Looming Global Care Crisis' (ILO, 28 June 2018) <https://www.ilo.org/africa/media-centre/pr/WCMS_633460/lang--en/index.htm> accessed 22 June 2022.

⁷ *ibid.*

⁸ ILO, 'Formalizing Domestic Work' Domestic Work Policy Brief 10 (ILO) <https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_559854.pdf> accessed 26 May 2023.

being unregistered and concealed.⁹ Unfortunately, the domestic work of women who are not gainfully employed, women who are forced to cut down their work hours in order to take care of the home as well as girls who are saddled with domestic responsibilities beyond what is permissible under the law remain unaccounted for.¹⁰ For instance, many full housewives do not receive remuneration for the domestic work they do in keeping the home running neither do girls who are deprived of formal education in order to support with domestic work remunerated for their activities. While the domestic activities of younger girls are mostly kept hidden due to various laws that prohibit child labour across Africa, the same cannot be said of adult women.¹¹ Consequently, the economic contribution of these women to the nation's gross domestic product (GDP) remains hidden.¹² This is mainly due to the perception that earnings influence the economic value ascribed to individuals as a result of which unpaid work is not seen as valuable because it has no earnings attached to it despite having hidden economic value.¹³ Thus, while male and female counterparts in paid work have documented evidence of work experience, tax payment and contribution to GDP, the women whose main activities revolve around the house and family care remain in the category of unpaid and undocumented labour because their work is not recognised as 'work' within the African context since the nature of domestic work is invisible.

It is against this background that this article examines the economic exploitative nature of the domestic work of women that are not employed in paid labour. The assessment of the economic exploitation in this article is from a gender injustice approach to examine the proportion of unpaid domestic work of males and females in select African countries and weigh the economic loss against the economic independence of women and girls in Africa. The article examines the constitutional protection of women in unpaid labour and balances this protection against gender stereotype in the home in terms of domestic work.

2. Legal framework for paid and unpaid work in Africa

⁹ Zahrah Nesbitt-Ahmed, 'Gender, Paid Domestic Work and Social Protection. Exploring Opportunities and Challenges to Extending Social Protection Coverage among Paid Domestic Workers in Nigeria' (UNICEF 2020) <<https://www.unicef-irc.org/article/1961-gender-paid-domestic-work-and-social-protection.html>> accessed 28 January 2022.

¹⁰ Charmes (n 3) 17.

¹¹ Diane L Putnick and Marc H Bornstein, 'VI. Girls' And Boys' Labor and Household Chores in Low- and Middle-Income Countries: Gender In Low- and Middle-Income Countries' (2016) 81 Monographs of the Society for Research in Child Development 104.

¹² International Labour Organization, 'Child Labour in Africa' (*ILO*) <<https://www.ilo.org/africa/areas-of-work/child-labour/lang--en/index.htm>> accessed 28 May 2023.

¹³ TG Apata and others, 'Household Unpaid Work Analysis in Developing Countries: Are Women in Nigeria Responsive? Evidence from Southwest, Nigeria' (2021) 17 Journal of the Austrian Society of Agricultural Economics 389.

Women from all socio-economic backgrounds struggle with the responsibility of unpaid labour.¹⁴ However, women in lower income brackets without access to support systems like reasonably priced childcare and domestic workers are more adversely affected.¹⁵ In Africa, especially in conflict and epidemic prone areas, women often bear the bulk of the domestic and care work responsibilities which goes without economic recognition.¹⁶ Considering the significance for wellbeing, unpaid domestic work frequently falls off agenda due to the misconception that, in contrast to assessments of conventional market work, it is hard to quantify and has little bearing on policies.¹⁷ However, ignoring unpaid domestic work produces false conclusions about the state of people's well-being and the importance of their time, which in effect limits the effectiveness of policy in a number of socioeconomic sectors, particularly gender disparities in employment and other areas of development.¹⁸ Thus, the consistent gender gap in economic outcome can be attributed to lack of and inadequate policy intervention to recognise and quantify unpaid domestic work and this places women and girls at a disadvantage since every moment they spend in unpaid domestic labour cuts them short of vocational and educational empowerment.¹⁹ Thus, this section focuses on the legal framework for gender justice and equality with particular reference to domestic work in Africa.

2.1 International and Regional Instruments

2.1.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights²⁰ (UDHR) which informs the development of human rights in many spheres guarantees the equality of rights of all human beings.²¹ Though the UDHR did not specifically make provisions on unpaid work, it paved way for several international instruments which reinforced the equality of human beings irrespective of their sex, nationality, race or circumstances surrounding their birth.²² Specifically, the International Labour Organisation (ILO), in 2008, included the issue of domestic work in the agenda of the International Labour Conference of 2010 with the aim to adopt a Convention for decent work for domestic

¹⁴ Gaëlle Ferrant, Luca Maria Pesando and Keiko Nowacka, 'Unpaid Care Work: The Missing Link in the Analysis of Gender Gaps in Labour Outcomes' <https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf> accessed 27 June 2022.

¹⁵ Vereinte Nationen (ed), *Why Addressing Women's Income and Time Poverty Matters for Sustainable Development* (United Nations 2020).

¹⁶ African Union, 'AU Strategy for Gender Equality and Women's Empowerment' (27 July 2022) <<https://au.int/en/articles/au-strategy-gender-equality-and-womens-empowerment>> accessed 27 July 2022.

¹⁷ Claire Bishop, 'Unpaid Care and Domestic Work – a Global Challenge with Local Solutions' (OECD Development Matters) <<https://oecd-development-matters.org/2018/03/14/unpaid-care-and-domestic-work-a-global-challenge-with-local-solutions/>> accessed 29 May 2023.

¹⁸ Ferrant, Pesando and Nowacka (n 14).

¹⁹ *ibid.*

²⁰ Universal Declaration of Human Rights 1948.

²¹ *ibid.*

²² *ibid.*

workers.²³ This led to the Domestic Workers Convention²⁴ in 2011 and which came into force in 2013.

2.1.2 Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women²⁵ (CEDAW) was adopted by the United Nations General Assembly in 1979 and came into force on 3 September 1981. The CEDAW aims to eliminate all forms of discrimination against women and girls and urges states to promote women's rights and equal rights.²⁶ Based on the principles of non-discrimination, state obligation and substantive equality,²⁷ the CEDAW defines discrimination as 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.'²⁸ This international instrument sets the pace for the recognition and advancement of the rights of women across the globe. A specific relevant provision of the CEDAW to this work is Article 11 which places an obligation on states to take measures to eliminate discrimination against women in employment by ensuring that women have the same rights, opportunities, benefits and working condition as men. Unfortunately, the CEDAW did not address the issue of unpaid work of women and girls in the domestic sphere.

2.1.3 Domestic Workers Convention

The Domestic Workers Convention,²⁹ formally known as ILO Convention, was adopted in 2011 to address the rights and protections of domestic workers globally. This Convention aims to improve the precarious working conditions faced by domestic workers, who are predominantly women and frequently excluded from labour protections. The Convention requires that domestic workers be informed of their terms and conditions of employment in an understandable manner. It also mandates reasonable working hours, daily and weekly rest periods, and paid annual leave.³⁰ Furthermore, the Convention obligates member states to take measures to protect domestic

²³ D Du Toit, 'Extending the Frontiers of Employment Regulation: The Case of Domestic Employment in South Africa' (2011) 14 *Law, Democracy & Development* <<http://www.ajol.info/index.php/ldd/article/view/68286>> accessed 1 August 2024.

²⁴ Domestic Workers Convention 2011.

²⁵ Convention on the Elimination of All Forms of Discrimination Against Women 1979 (United Nations, Treaty Series,) 13.

²⁶ Article 2 of CEDAW.

²⁷ Preamble to CEDAW.

²⁸ Article 1 of CEDAW.

²⁹ International Labour Organization, C189 - Domestic Workers Convention No 189 of 16 June 2011 <https://www.refworld.org/legal/agreements/ilo/2011/en/83143> accessed 10 August 2024.

³⁰ *Ibid*, Articles 7 and 10.

workers from all forms of abuse, harassment, and violence.³¹ The Convention ensures that domestic workers have the right to minimum wage coverage and stipulates that wages should be paid directly in cash at regular intervals.³² It advocates for the inclusion of domestic workers in social security schemes, including maternity benefits, ensuring they receive similar protections as other workers.³³ On the occupational safety and health of domestic workers, the Convention emphasizes the importance of ensuring a safe and healthy working environment for domestic workers.³⁴ It also recognizes the right of domestic workers to form and join trade unions which is a critical tool for collective bargaining and advocacy.³⁵ The Convention includes provisions specifically aimed at protecting migrant domestic workers from exploitation and abuse, ensuring they have the same rights as national workers.³⁶

The adoption of the Domestic Workers Convention holds significant potential for improving the rights and conditions of domestic workers in Africa. However, its impact is contingent upon several factors including ratification, effective implementation, social norms, economic factors and so on. While the Convention offers a comprehensive framework for the protection of domestic workers, its effectiveness in Africa is limited by the number of countries that have ratified it. As of now, only a few African nations have ratified the Convention, such as South Africa, which has integrated many of its provisions into national law. However, enforcement remains a challenge due to resource constraints and institutional inefficiencies.³⁷ Also, in many African societies, domestic work is undervalued and often perceived as informal or unskilled labour. This cultural perception poses a significant barrier to the recognition of domestic workers as legitimate labourers deserving of rights and protections. Changing these deeply ingrained societal attitudes is crucial for the Convention's success.³⁸ Additionally, the economic realities in many African countries pose challenges to implementing the Convention's provisions, particularly regarding fair remuneration and social security. Many employers, often from middle or low-income backgrounds, may find it difficult to comply with the financial aspects of the Convention.³⁹

³¹ *Ibid*, Article 5.

³² *Ibid*, Article 11.

³³ Article 14 of ILO Convention.

³⁴ *Ibid*, Article 13.

³⁵ *Ibid*, Article 3.

³⁶ *Ibid*, Article 8.

³⁷ Adelle Blackett, 'The Decent Work for Domestic Workers Convention and Recommendation, 2011' (2012) 106 *American Journal of International Law* 778.

³⁸ *Ibid*.

³⁹ *Ibid*.

2.1.4 African Charter on Human and Peoples Rights

At the regional level, the African Charter on Human and Peoples Rights⁴⁰ (African Charter) guarantees the right to be free from discrimination,⁴¹ equality⁴² and more specifically, the right to work under satisfying conditions and receive equal pay for equal work.⁴³ The African Charter has been criticised for its gross inadequacy in reference to women's protection when compared with other regional instruments on human rights.⁴⁴ The Maputo Protocol aims to eliminate all forms of discrimination against women through legislative, institutional and other appropriate measures.⁴⁵ State parties have the obligation to ensure that women have equal opportunities like men in work and career advancement.⁴⁶ Article 13(h) specifically requires state members to take steps to recognise the economic value of the domestic work of women. Unfortunately, while the Maputo Protocol recognises the unpaid work of women, no strong position was taken under the economic and social welfare rights of the Protocol to reduce and redistribute the unpaid domestic work. Thus, it can be deduced that the African leaders are not taking a strong stance in ensuring the reduction and redistribution of unpaid domestic work but rather focuses on the economic recognition of unpaid domestic work. In a bid to ensure inclusive development of the African continent, the AU adopted the AU Agenda 2063 with Aspiration 6 focusing on an Africa 'whose development is people-driven, relying on the potential of African people, especially its women and youth, and caring for children.'⁴⁷ The goals for Aspiration 6 are full gender equality in all areas of life and engaged and empowered youth and children. To guarantee that women were included in Africa's development agenda, the AU, in 2019, created the Gender Equality and Women's Empowerment (GEWE) strategy 2018-2028.⁴⁸ The GEWE Strategy is a blueprint for enhancing women's agency in Africa and ensuring that, among other things, effective execution of legislation and sufficient financing of gender equality work, women's voices are amplified and their concerns are effectively addressed. It serves as a roadmap for carrying out the AU's GEWE commitments and will be utilized to create transformational programs that benefit African women and girls both at home and abroad.⁴⁹ Consequently, the African Union (AU) adopted the Protocol to the African Charter

⁴⁰ African Charter on Human and Peoples' Rights 1981.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ Claude E Welch, 'Human Rights and African Women: A Comparison of Protection under Two Major Treaties' (1993) 15 *Human Rights Quarterly* 549; Rachel Rebouch, 'Labor, Land, and Women's Rights in Africa: Challenges for the New Protocol on the Rights of Women' (2006) 19 *Harvard Human Rights Journal* 235.

⁴⁵ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.

⁴⁶ *ibid.*

⁴⁷ African Union, 'Our Aspirations for the Africa We Want' (*African Union*) <<https://au.int/en/agenda2063/aspirations>> accessed 22 June 2022.

⁴⁸ African Union (n 16).

⁴⁹ *ibid.*

on Human and Peoples' Rights on the Rights of Women in Africa⁵⁰ (Maputo Protocol) in 2003 to specifically cater for the rights of women in Africa.

2.2 National legislation

2.2.1 Ghana

African nations have taken steps towards the realisation of Aspiration 6 at varying degrees. In terms of domestic work for instance, Ghana recognised a domestic worker in section 175 of the Labour Act⁵¹ as a person who is not a member of the family of the person who employs such domestic worker for the purpose of house-help. Furthermore, article 24(1) of Ghana Constitution grants every person the right to work under satisfactory and safe conditions and to receive equal pay for equal work without any form of discrimination.⁵² Section 24(2) of Ghana Constitution further guarantees a reasonable limitation of number of working hours as well as paid holidays, including public holidays. To further protect children from exploitative labour, the Children's Act of Ghana⁵³ forbids exploitative child domestic labour which is measured by the kind of labour that deprives a child of education, health or development.⁵⁴ Thus, while there are legislative measures to protect the interests of paid domestic workers in Ghana, it is clear that the number of hours that members of a household put into domestic work do not count towards the number of hours that such a person contributes economically towards the national GDP.⁵⁵

2.2.2 Nigeria

In Nigeria, legislations such as the Labour Act 1971,⁵⁶ Employee Compensation Act 2010⁵⁷ and the Labour Migration Policy 2013⁵⁸ seem to integrate the standards of the Domestic Workers Convention. While the legislative steps may appear to protect domestic workers, it has been criticised for being discriminatory and degrading which gives room for loopholes which exposes domestic workers to vulnerabilities.⁵⁹ For instance, section 91 of the Nigerian Labour Act defines a 'domestic servant' in the context that creates a superiority of the employer in a degrading way to the domestic worker. A domestic servant is defined as:

⁵⁰ Maputo Protocol.

⁵¹ Labour Act 2003.

⁵² Constitution of Ghana 1992.

⁵³ Children's Act 1998.

⁵⁴ *ibid.*

⁵⁵ Dzodhi Tsikata, International Labour Office, and Conditions of Work and Employment Programme, *Domestic Work and Domestic Workers in Ghana: An Overview of the Legal Regime and Practice* (ILO 2009).

⁵⁶ Labour Act 1971.

⁵⁷ Employee Compensation Act 2010.

⁵⁸ Labour Migration Policy 2013.

⁵⁹ Nesbitt-Ahmed (n 9).

Any house, table or garden servant employed in or in connection with the domestic services of any private dwelling house, and includes a servant employed as the driver of a privately owned or privately used motor car.⁶⁰

Unfortunately, none of these legislative interventions take cognisance of the plight of unpaid ‘domestic workers’ who are mainly the members of the household. The level of exclusion of both paid and unpaid domestic workers in the economic consideration in Nigeria manifests in the definition of a worker in the National Minimum Wage (Amendment) Act 2011⁶¹ as

...any member of the civil service of the Federation, of a State or Local Government or any individual (other than persons occupying executive, administrative, technical or professional positions in any such civil service) who has entered into or works under a contract with an employer whether the contract is manual labour, clerical work or otherwise, expressed or implied, oral or in writing, and whether it is a contract personally to execute any work or labour.⁶²

2.2.3 South Africa

In South Africa, the Basic Conditions of Employment Act provides for the minimum wages as well as the working conditions of domestic workers in South Africa.⁶³ South Africa appears to be a step ahead of some other African countries in the inclusion of paid domestic workers in the protection fold. In 2020, the Constitutional Court declared section 1(xix)(v) of the Compensation for Occupational Injuries and Diseases Act 1993⁶⁴ (COIDA), which excludes domestic workers from the definition of employees, invalid and unconstitutional.⁶⁵

It is clear from the instances that while there is still much to do in Africa to integrate unpaid domestic work into the legislative frameworks, it cannot be said that African governments and civil societies are not making efforts. For instance, in 2009, a conceptual framework was developed to guide the activities of the United Nations Development Programme (UNDP) in this area which took cognisance of recognition, reduction and redistribution (3Rs).⁶⁶ The recognition component examines the significance of unpaid domestic work to human wellbeing and considers various methods for doing so with measures such as conducting surveys on time spent on unpaid domestic work, comprehending the national context, valuing unpaid domestic work, promoting

⁶⁰ Labour Act.

⁶¹ National Minimum Wage (Amendment) Act 2011.

⁶² *ibid.*

⁶³ Basic Conditions of Employment Act 1997.

⁶⁴ Compensation for Occupational Injuries and Diseases Act 1993.

⁶⁵ *Mahlangu and Another v Minister of Labour and Others* (2021) 1 BCLR 1 (CC).

⁶⁶ Grace Atim and Bosede Awodola, ‘Gender Justice and Empowerment: Evaluating Women’s Unpaid Care Work in Nigeria’ (2020) 8 International Journal of Gender and Women’s Studies 27.

awareness, and creating skills and changing policies to help caregivers.⁶⁷The emphasis on reduction centres on improving access to vital infrastructure, maintaining and expanding basic public services, paying caregivers in cash, providing tax credits or other benefits, and expanding public care services. Also, the redistribution component focuses on measures that support an equitable distribution of care responsibilities not only between men and women in households, but also between and among the main organizations that provide care services, including the public sector, the private sector, and local communities. This element thus centres on the establishment of measures that encourage burden-sharing and interaction with males.⁶⁸

The 3Rs framework was adopted by ActionAid in its Unpaid Care Work Project which was launched in 2010 in Nepal, Nigeria and Uganda with the aim of recognizing, reducing and redistributing the burden of women's unpaid care work.⁶⁹ However, a careful study of the progress in Nigeria shows that unpaid domestic work is still not recognised and mainstreamed into government plans and policies.⁷⁰It is clear that African nations need to develop and adopt social and economic policies that is capable of reducing the responsibility of female members of a household from unpaid work. If this is achieved, there will be a gradual bridge of the gender injustice gap across African nations.

3. Gender Injustice Trend in Domestic Work

The disparity in the unpaid and underpaid domestic work of women and girls in Africa is a cause for concern which is gradually gaining global attention. In Sub-Saharan Africa, women and girls are responsible for collecting 71% of the water used by households. Together, they devote 40 billion hours collecting water annually, which is more than the entire French labour force in a year.⁷¹ In 2019, the census conducted in Kenya shows that 50.2 percent of the working population are women with most of these women working in informal economy combined with their unpaid domestic and community work fronts.⁷² In Ethiopia, 71 percent of women fetch water while 54 percent gather firewood and this takes an average of seven hours for both chores.⁷³ In Ghana, women are estimated to spend 2 and half hours in unpaid domestic work compared to their male counterparts who spend about 40 minutes daily in unpaid domestic work.⁷⁴ In Nigeria, women

⁶⁷ Deborah Budlender and Rachel Moussié, 'Making Care Visible: Women's Unpaid Care Working Nepal, Nigeria, Uganda and Kenya' (ActionAid 2014) <<https://www.empowerwomen.org/en/resources/documents/2015/6/making-care-visible-womens-unpaid-care-work-in-nepal-nigeria-uganda-and-kenya?lang=en>> accessed 26 July 2022.

⁶⁸ Emily Esplén, 'Gender and Care: An Overview Report' [2009] *Gender and Development in Brief* <<http://catalogue.safaid.net/sites/default/files/publications/Gender%20and%20care.pdf>> accessed 27 July 2022.

⁶⁹ Budlender and Moussié (n 67).

⁷⁰ Atim and Awodola (n 66).

⁷¹ *ibid.*

⁷² Kenya National Bureau of Statistics (ed), *2019 Kenya Population and Housing Census* (Kenya National Bureau of Statistics 2019).

⁷³ Pablo Suárez Robles, 'Gender Disparities in Time Allocation, Time Poverty, and Labor Allocation Across Employment Sectors in Ethiopia', *Gender Disparities in Africa's Labor Market* (World Bank 2010).

⁷⁴ Atim and Awodola (n 66).

engage in domestic chores such as cleaning, caring for children, laundry, cooking and caring for the elderly while the men take care of activities such as gardening and driving.⁷⁵ While some households employ the services of workers to carry out these chores, many households have to resort to members of the household doing these domestic tasks with the bulk falling on the women and the girls in the household. A survey in South Africa revealed that women engage in unpaid domestic work eight times higher than men with women accounting for about three-quarter of the unpaid domestic work in South Africa.⁷⁶ A study in Tanzania revealed that boys and girls work alike on the farm after which girls are expected to cook, fetch water, care for the younger children while the boys rest during this time while waiting for food to be served.⁷⁷ This study further revealed that women in Tanzania work longer hours and harder than men while at the same time serve the men, thereby intensifying gender inequality in Tanzania.

The World Bank, in 2014, estimates that on a daily basis, women in sub-Saharan Africa devote hours to unpaid domestic and care work with an average of 16 hours in Cameroon, 19 hours in Ethiopia, 15 hours in Ghana, 16 hours in Lesotho, 6 hours in Liberia, 9 hours in Malawi, 19 hours in Mauritius, 16 hours in South Africa and Tanzania respectively and 15 hours in Uganda.⁷⁸ A study in Nigeria reveals that women in full time employment shift domestic work to evening hours thereby placing additional burden on them while women in part-time employment are able to adjust their work schedules to accommodate their domestic work.⁷⁹ However, irrespective of the employment status of women, there appears to be a consensus that unpaid domestic work is significant and it is not influenced by the employment status of women due to the perception that women are naturally seen as homemakers.⁸⁰ In circumstances where the adult women of the household have to work, whether full time or part-time, the quality of domestic work reduces and this shifts the burden on other members of the household. In most cases, adolescent girls of the household have to take up this responsibility and may even have to drop out of school in order to support with unpaid domestic work, especially where a lot of care work is required. This further emphasises the level of inequality and gender injustice against the female members of the household. It is therefore not surprising that many men get promoted over women in the workplace.⁸¹ To address this gender injustice at the home front, it is important for African governments to strive towards closing the gender gap in unpaid domestic work by adopting the

⁷⁵ Nesbitt-Ahmed (n 9).

⁷⁶ Debbie Budlender, *Why Should We Care about Unpaid Care Work?* (UNIFEM 2004).

⁷⁷ S Feinstein, R Feinstein and S Sabrow, 'Gender Inequality in the Division of Household Labour in Tanzania' (2011) 14 *African Sociological Review / Revue Africaine de Sociologie* 98.

⁷⁸ World Bank, 'Proportion of Time Spent on Unpaid Domestic and Care Work, Female (% of 24 Hour Day) - Sub-Saharan Africa' (*World Bank*) <https://data.worldbank.org/indicator/SG.TIM.UWRK.FE?locations=ZG&name_desc=false> accessed 25 June 2022.

⁷⁹ Apata and others (n 13).

⁸⁰ *ibid.*

⁸¹ Budlender (n 76).

3Rs model which aims to recognise and reward women's unpaid work; lessen the amount of it; and disperse unpaid work.⁸²

4. The ILO Decent work agenda

The International Labour Organization's (ILO) Decent Work Agenda, adopted in 1999, outlines four strategic objectives: promoting employment, guaranteeing rights at work, extending social protection, and strengthening social dialogue.⁸³ While universally applicable, the agenda's effectiveness in the African context requires nuanced consideration. One of the agenda's strengths lies in its recognition of employment as a cornerstone of development.⁸⁴ Africa's predominantly youthful population necessitates substantial job creation to harness its demographic dividend.⁸⁵ The agenda's emphasis on promoting sustainable enterprises, investing in skills development, and fostering entrepreneurship aligns with this need. However, the agenda's focus on formal employment can be a limitation in the African context where informal economies dominate.⁸⁶ A more nuanced approach that acknowledges and seeks to improve working conditions within the informal sector is crucial. The agenda's commitment to guaranteeing fundamental principles and rights at work, including freedom of association and collective bargaining, is commendable.⁸⁷ Regarding many African countries, weak institutional frameworks, limited access to justice, and widespread informality hinder the effective realization of these rights. Thus, addressing these systemic challenges is essential for the agenda to translate into tangible improvements for African workers. The agenda also focuses on social protection which is crucial in mitigating vulnerability and reducing poverty. It places emphasis on social dialogue as a means to achieve consensus and build sustainable solutions is particularly relevant in Africa's diverse and dynamic societies. With the right institutions in place to ensure effective implementation of the agenda, this could go a long way in guaranteeing the rights of domestic workers in the continent.

5. Drivers of Inequalities in Unpaid Domestic Work

⁸² Simona Jokubauskaitė and others, 'The Role of Unpaid Domestic Work in Explaining the Gender Gap in the (Monetary) Value of Leisure' [2021] Transportation.

⁸³ ILO, 'Decent Work' (ILO, 1999) <<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> accessed 13 November 2023.

⁸⁴ Ibid.

⁸⁵ UNECA, 'Harnessing the Demographic Dividend Through Investments in Youth' (UNECA, 2017) <https://www.uneca.org/sites/default/files/PublicationFiles/harnessing_the_demographic_dividend_through_investments_in_youth_report.pdf> accessed 13 November 2023.

⁸⁶ ILO, 'Women and Men in the Informal Economy: A Statistical Picture' (ILO, 2018) <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_626831.pdf> accessed 13 November 2023.

⁸⁷ ILO, 'Declaration on Fundamental Principles and Rights at Work' (ILO, 1998) <<https://www.ilo.org/declaration/lang--en/index.htm>> accessed 13 November 2023.

A major contributing factor to the disparity in unpaid domestic work in Africa is social and cultural norms which stems mainly from patriarchy and gender stereotypes.⁸⁸ Social institutions affect gender roles by defining what behaviours are regarded acceptable or unacceptable in a culture. For example, in many cultures, paid labour is viewed as a male activity whereas unpaid domestic work, including child care, is viewed as a woman's responsibility.⁸⁹ According to a UN Women study of 33 countries, girls between the ages of 7 and 14 tend to their younger siblings and do more household chores than boys their age. This practice is inappropriate for women in general, and they are not paid for it.⁹⁰ Another factor that contributes to the unequal participation of unpaid domestic work in an African household is the unequal access, disparity in quality and level of education. While tremendous progress has been made in terms of providing access to education in many parts of Africa, questions abound on the inequality that persists in the quality of education between the rich and the poor.⁹¹ In the same vein, females in many African countries have been recorded to face discrimination in accessing education and despite the recorded progress, the illiteracy level of females in Africa is still relatively high when compared to males.⁹² Thus, the inequality in access to education of girls and boys have a lasting effect on the level of education that men and women end up attaining, especially in societies where high reliance is on girls to combine school work with higher rate of domestic work.⁹³ In addition, household income is another factor that promotes unpaid domestic work in Africa. Where the head of the household earns an income that is not sufficient to engage a paid domestic worker, the domestic work consequently fall on the members of the household and needless to say that the female members bear the burden more than the male members.⁹⁴ Moreover, where a household earns high income and has high financial commitments, this may also impact on the ability to engage a paid domestic worker to complement the unpaid domestic work in the household.

6. Human Rights Implication of Unpaid Domestic Labour

⁸⁸ Olanike Adelakun-Odewale, 'Right to Inclusive Development of the Girl Child in Africa' in AC Onuora-Oguno, WO Egbewole and TE Kleven (eds), *Education Law, Strategic Policy and Sustainable Development in Africa* (Springer International Publishing 2018) <http://link.springer.com/10.1007/978-3-319-53703-0_7> accessed 30 July 2022.

⁸⁹ Johannes P Jütting and others, 'Measuring Gender (In)Equality: The OECD Gender, Institutions and Development Data Base' (2008) 9 *Journal of Human Development* 65.

⁹⁰ UN Women, *Why Gender Equality Matters Across All SDGs: An Excerpt of Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development* (UN Women 2018).

⁹¹ Rob J Gruijters and Julia A Behrman, 'Learning Inequality in Francophone Africa: School Quality and the Educational Achievement of Rich and Poor Children' (2020) 93 *Sociology of Education* 256.

⁹² Judith Shabaya and Kwadwo Konadu-Agyemang, 'Unequal Access, Unequal Participation: Some Spatial and Socio-economic Dimensions of the Gender Gap in Education in Africa with Special Reference to Ghana, Zimbabwe and Kenya' (2004) 34 *Compare: A Journal of Comparative and International Education* 395.

⁹³ Joerg Baten and others, 'Educational Gender Inequality in Sub-Saharan Africa: A Long-Term Perspective' (2021) 47 *Population and Development Review* 813.

⁹⁴ Emmanuel Orkoh, Phillip F Blaauw and Carike Claassen, 'Spousal Effects on Wages, Labour Supply and Household Production in Ghana' (2021) 24 *South African Journal of Economic and management Sciences* <<http://www.sajems.org/index.php/sajems/article/view/3535>> accessed 6 August 2022.

Unpaid domestic work is distributed unequally between male and female members of a household in most African households, which is a violation of women's rights and a hindrance to their economic development.⁹⁵ Therefore, the obliviousness toward unpaid domestic work that is commonly accepted as women's responsibility is a contributing factor to the persistence of gender inequality and gender injustice in Africa, as well as increasing the vulnerability of women in Africa. This gender inequality impedes on women's right to compete on an equal footing with men in the labour market which indirectly violates the right to equality as guaranteed by the African Charter⁹⁶ and constitutions of several African nations. Apart from the right to equality, the health of women and girls is at stake when engaged in unpaid domestic work in addition to paid work to support the family. This manifests from the inability of women to take good care of their health due to inadequate time. Exhaustion and stress that comes with excessive domestic work in addition to other engagements have been reported to lead to constant headaches, backpains and other physical health effects in women and girls.⁹⁷ Additionally, the mental health of women is at stake with the burden of excessive unpaid domestic work which leads to stress induced release of neurohormones, including cortisol thereby leading to depression and slow recovery thereof.⁹⁸

Due to the societal norm in many African countries that sees women as the homemakers while men are perceived to be the breadwinners. In situation where the domestic work overburdens the female members of a household, it is not unusual for girls to be made to drop out of school to assist with domestic work and care of the children and elderly. The need for the girl child to drop out of school to assist with domestic work while the boy child remains in school is a clear violation of the right of the girl child to education as guaranteed by article 25 of the African Charter on the Rights and Welfare of the Child (ACRWC). The consequent low level of girl child education in turn will lead to increased poverty rate and economic incapacity of women.⁹⁹ It has been postulated that for every child to realise their potential development, there is a need for inclusive development which offers every child, irrespective of their sex, equal access and opportunities.¹⁰⁰

7. Economic Impact of Unpaid Domestic Labour

It has been estimated that unpaid domestic labour accounts for about 10-35 percent of a nation's GDP.¹⁰¹ Any nation's ability to thrive and grow economically depends on the support and input of domestic labour. The long-standing gender inequalities in the labour force highlights the

⁹⁵ Atim and Awodola (n 66).

⁹⁶ African Charter.

⁹⁷ Atim and Awodola (n 66).

⁹⁸ Soraya Seedat and Marta Rondon, 'Women's Wellbeing and the Burden of Unpaid Work' [2021] *BMJ* n1972.

⁹⁹ Godiya Allanana Makama, 'Patriarchy and Gender Inequality in Nigeria: The Way Forward' (2013) 9 *European Scientific Journal* 101.

¹⁰⁰ Adedokun-Odewale (n 88).

¹⁰¹ UN ESC, 'Women's Economic Empowerment in the Changing World of Work: Report of the Secretary-General' (United Nations 2017) E/CN.6/2017/3 <https://www.un.org/ga/search/view_doc.asp?symbol=E/CN.6/2017/3> accessed 22 June 2022.

justifications for standard labour supply constraints that ignore the impact of societal norms on women's employment and the capacity to join and stay in the labour market.¹⁰² As a result, men and women in the family are not given the same amounts of time to devote to paid work due to the unequal allocation of domestic work between them. It is therefore inaccurate to draw judgments about a nation's economic standing without taking into account the output of women and girls who do not receive compensation for their domestic labour. Having established that unpaid domestic work adds value to the economy of a nation, it has been found that a reduction in the time spent on unpaid domestic work of women will lead to a 15 and 44 percent increase in labour productivity and capital productivity respectively. Unpaid domestic work also impacts on the quality of employment of women since the unequal amount of time spent in unpaid domestic work by women increases the chances that women will be more involved in part-time and vulnerable work compared to their male counterparts which could therefore result in 'occupational downgrading' which makes women to work below their skill capacity and in poor conditions.¹⁰³ Consequently, this will widen the gaps in the earnings of women when compared to men.

Furthermore, unpaid domestic work is a factor that contributes to and promotes poverty in many African nations.¹⁰⁴ In Africa, women that have higher education and have a good paying job have been known to substitute unpaid domestic work with paid work compared to women with little or no education.¹⁰⁵ It has been established that as women's participation in labour market increases, unpaid domestic work appears to be traded on the labour market and men take part more in unpaid work thereby leading to reduction and redistribution.¹⁰⁶ This in turn reduces poverty rate and increases the economic output of countries. It has therefore been argued that by assigning a financial value to unpaid work, policymakers will be able to compare unpaid work to other economic indicators on a financial basis. As a result, valuation serves as a vehicle for communication that converts unpaid work into a narrative that governments can understand. Data from unpaid work can thus be incorporated into economic statistics via valuation.¹⁰⁷ When considered from the number of hours that a paid domestic worker puts into domestic work, which is about an average of 32 hours weekly with the maximum weekly hours being 45 hours,¹⁰⁸ it is clear that every woman involved in unpaid domestic labour loses an average of 32 hours income at the home front. It is therefore not surprising that unpaid domestic work is gradually gaining

¹⁰² Ferrant, Pesando and Nowacka (n 14).

¹⁰³ Ariane Hegewisch and Janet C Gornick, 'The Impact of Work-Family Policies on Women's Employment: A Review of Research from OECD Countries' (2011) 14 *Community, Work & Family* 119.

¹⁰⁴ Ene Obi, 'Don't Stay Quiet in the Face of Oppression, ActionAid Charges Women' *The Cable* (9 March 2020) <<https://www.thecable.ng/dont-stay-quiet-in-the-face-of-oppression-actionaid-charges-women>> accessed 30 July 2022.

¹⁰⁵ Cristian Alonso and others, 'Reducing and Redistributing Unpaid Work: Stronger Policies to Support Gender Equality' (2019) WP/19/225 IMF Working Paper.

¹⁰⁶ *ibid.*

¹⁰⁷ Eleanor MacKillop and Sally Sheard, 'Quantifying Life: Understanding the History of Quality-Adjusted Life-Years (QALYs)' (2018) 211 *Social Science & Medicine* 359.

¹⁰⁸ Apata and others (n 13).

attention as not merely consumption but also production which is not free, not unlimited and therefore of some economic benefit.¹⁰⁹

8. Recommendations

Having examined the legal frameworks for the protection of the rights of domestic workers in Africa, the following recommendations are essential:

- The rights of domestic workers should be incorporated into the constitutional protection mechanisms of national laws.
- African countries that have not ratified the Domestic Workers' Convention should take proactive steps to ratify and implement the Convention.
- Awareness should be created to achieve societal behavioural change towards domestic workers.
- Domestic workers should be enlightened on their rights to form trade unions and to understand that they are rights bearers just like every member of the society.

9. Conclusion

This article examined the gender issues associated with unpaid domestic work in Africa with specific examples of the trend in some African countries. It was discovered that while steps are being taken at the regional and national levels to bridge the inequality across spheres in Africa, a major challenge lies in bridging the inequality associated with unpaid domestic work in African households. While it is difficult to quantify the economic value of unpaid domestic work, it is clear that the major promoting factor of the gender inequality in the burden of unpaid domestic work remains social norms that ascribes domestic roles to women and girls.

This article assessed the economic and human rights impact of unpaid domestic work on women and girls and urges African governments lagging behind to be more proactive in paying detailed attention to the gender injustice done in this sphere of life. This paper therefore advocates for policy intervention that aims to recognise, reduce and redistribute unpaid domestic work among both male and female members of African households.

¹⁰⁹ Joanna Coast, 'A History That Goes Hand in Hand: Reflections on the Development of Health Economics and the Role Played by Social Science & Medicine, 1967–2017' (2018) 196 *Social Science & Medicine* 227.