

# ACHIEVING PAY AND EMPLOYMENT EQUITY FOR WOMEN - HUMAN RIGHTS AND BUSINESS/DEVELOPMENT IMPERATIVES

Paper for the Pay and Employment Equity for Women Conference, Wellington, New Zealand June 28-29, 2004

Mary Cornish and Fay Faraday\*

## TABLE OF CONTENTS

INTRODUCTION ..... 2

PART I: THE CONTEXT OF GLOBAL GENDER DISCRIMINATION ..... 3

PART II: PAY AND EMPLOYMENT EQUITY - INTERNATIONAL HUMAN RIGHTS STANDARDS ..... 9

PART III: BUILDING EQUITABLE LABOUR MARKETS - THE BUSINESS AND DEVELOPMENT IMPERATIVES..... 12

PART IV: ACHIEVING PAY AND EMPLOYMENT EQUITY - ISSUES TO CONSIDER..... 14

CONCLUSION ..... 19

BIBLIOGRAPHY ..... 28

### CAVALLUZZO HAYES SHILTON MCINTYRE & CORNISH

Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto, Ontario M5T 2S6  
Telephone: 416-964-1115  
Fax: 416-964-5895  
[www.cavalluzzo.com](http://www.cavalluzzo.com)

\* *The authors are partners in the law firm of Cavalluzzo Hayes Shilton McIntyre & Cornish. The authors gratefully acknowledge the research assistance of Janina Fogels.*

## INTRODUCTION

*"The advancement of women and the achievement of equality between men and women are a matter of human rights and a condition for social justice and should not be seen in isolation as a women's issue. They are the only way to build a sustainable, just and developed society. Empowerment of women and equality between women and men are prerequisites for achieving political, social, economic, cultural and environmental security among peoples."*

*1995 UN Beijing Declaration*

Systemic violations of women's rights continue to occur worldwide despite years of commitments to end inequalities and despite the proven economic and development benefits of gender equitable labour policies. Labour markets in both developing and developed countries deny women one of the most basic human rights – the right to non-discriminatory work and income. Systemic gender inequalities permeate all aspects of women's work lives, including whether they obtain work at all. At work, they are segregated in job ghettos with inferior conditions, denied access to higher paying male work and paid much less than men.

Part I of this paper reviews the world-wide patterns of systemic discrimination, economic inequality and poverty which women face in an era of globalization, showing how labour markets provide vastly different and inferior benefits to women than men. Part II reviews the critical role played by employment and pay equity laws and policies as two of the major levers for transforming or "engendering" the labour market and promoting equitable economic growth. It sets out the world-wide consensus on the obligations of governments, employers and unions to redress pay and employment inequities, reflected in international human rights and labour instruments and policies. The Annex to the paper details the obligations flowing from these instruments that should inform the design for achieving gender equity in national and local labour markets. Part III reviews the business and development imperatives for finding solutions to this global crisis, including the short and long term benefits of "equitable" labour markets and corporate social responsibility for stimulating non-discriminatory economic growth, business prosperity and sustainable development. Part IV of the paper concludes by highlighting the key issues that need to be addressed by governments, employers and unions as they seek to implement effective pay and employment equity mechanisms. This includes: the need to take a multi-faceted systemic approach to mainstreaming women's economic equality; the challenges provided by the concentration of women in the expanding "precarious" employment sectors; the multiple disadvantages faced by women as a result of their race, ethnicity, indigenous status, disability, culture, language, poverty and burden of reproductive and family responsibilities; the key equality roles played by state actors, unions, employers and civil society; and finally, the need for effective and accessible enforcement mechanisms.

## **PART I: THE CONTEXT OF GLOBAL GENDER DISCRIMINATION**

*“Human Development, if not engendered, is endangered”  
UN Human Development Report, 1995*

### **Introduction**

Women throughout the world experience widespread gender discrimination in gaining access to and participating equally in labour markets. Fundamental to this discrimination is the prejudice women face as a result of stereotypes or culturally-based expectations about the roles and behaviours of men and women, as well as the double burden of struggling to reconcile work with household and caring responsibilities for children and family members. This discrimination is also reinforced by the discrimination women face in other areas of their lives such as education, health, exposure to violence and the further layers of disadvantage women experience as a result of their poverty, indigenous status, race, ethnicity, disability, culture, or language. Many of the world's most exploited migrating workers are women who are refugees, displaced, or trafficked workers. Many are victims of racism, xenophobia and related intolerance which create further unequal economic conditions. Women's multiple disadvantages result in unique experiences of social exclusion and discrimination (International Labour Office, 2004, Cornish, 2003, UN, 2000, ILO, 2002, ILO Director-General, 2003, Durban Declaration, 2001 and Armstrong and Cornish, 1997).

Women's economic opportunities are the product of many complex and inter-related political, economic and social forces. While the precise gendered nature of the market depends on the country (and even within countries women in different sectors experience different discrimination), there are a number of key trends. Many flow from the new globalized economy. These trends are women's increasing participation in the labour force; women's continuing occupational segregation; the persistent income gaps between male and female workers; women's continuing struggle to reconcile employment and family responsibilities; and women's concentration in precarious employment in the formal and informal economy. Industrialized and developing countries alike share these trends, although the burden of inequality falls greatest on women workers where poverty, violence, precarious employment, weak employment regulation, and racial, ethnic and indigenous discrimination are most pronounced (ILO World Commission, 2004 and UNIFEM, 2002). So, while there has been improved equality, quantitatively, in women's global labour market participation, this has yet to yield true socio-economic equality and empowerment for women.

### **Globalization and Gender Discrimination**

Globalization is fundamentally transforming the structure of countries' economies, labour markets, living standards and prevailing gender orders. As a result of globalization, employers seek to move large volumes of goods, services, information and capital across international borders with a minimum of regulation. The increasing reliance of the world on the informal economy and migrant workers has further "feminized" labour markets with the shift from the male model of so-called "standard" employment to the female model of "precarious" employment (Vosko, 2003 and Armstrong and Cornish, 1997). Workers', and particularly women workers', rights stand in the way of these global forces as labour lacks capital's mobility advantage and is subject to the threat of global capital moving to regions with lower standards. The international business community

has had significant success in persuading nation states to ease or to refrain from legislating or enforcing labour and equality protections. The result has been structural adjustment programmes, privatization of state services, anti-collective bargaining laws and business-friendly export processing zones, all of which have furthered the discrimination faced by women. As stated in a UN report, "economic systems which value profits often do so at the expense of female labour"; yet, for most women, their greatest asset is their labour. (Cornish, 2003, UN, 2001, ILO Director General, 2003 and Cornish, Faraday and Verma, 2004)

Globalization has undoubtedly opened some opportunities for women in more industrialized and developing countries to improve their position and enter the "new economy" sectors of the global labour force. Yet, even women who are able to obtain standard employment face discrimination in terms of the type of standard employment they have access to which is often part-time and insecure and the terms and conditions of that employment. At the same time, the gaps in terms of wages and the treatment of those women who do make it into better paying administrative or managerial positions and the balance of female earners, who remain in more marginal, underpaid and feminized sectors of the global economy continues to widen (Vosko, 2003 and Cornish, Faraday and Verma, 2004). It is clear that the number of women internationally who are engaged in "decent work" – available, freely chosen, productive, sustainable, equitable, secure and dignified – still lags far behind that of the world's men (ILO Director-General, 2003 and ILO World Commission, 2004 and Cornish, 2003).

While globalization brings with it more opportunities for countries to prosper, at the same time it brings many risks and it is generally acknowledged these risks fall disproportionately on women who are the poorest of the world's poor. The structure and conditions of employment for both men and women are now often in a constant state of flux, both positive and negative, creating economic uncertainty (Cornish, 2003 and 1996, ILO Director-General, 2003, ICFTU, 1999 and Armstrong, 1996).

### **Increasing Work Force Participation and Expanding Precarious Employment**

Women's labour force participation is increasing. In 2003, there were 63 women in the labour force per every 100 men. But while the female share of wage employment continues to grow gradually in most economically healthy countries (ILO Director-General, 2003), employment levels approach parity with that of men in less than half of the countries for which data is available. While in East Asia the ratio is 83:100, in the Middle East, North Africa and South Asia, it is 40:100 (International Labour Office, 2004, Cornish, 2003 and UNIFEM, 2002).

This increase in women's participation come primarily in the informal economy through self-employment, part-time employment and home-based low income work (ILO World Commission and UN, 2000). Women are also more likely to be in non-regular or atypical employment in the formal economy, hired in peripheral, insecure, casual or temporary work (International Labour Office, 2004). Micro- and small enterprises are creating increasing numbers of jobs for women. This growth in precarious work translates into greater job insecurity, lack of statutory protections and recognition, lower wages, and lack of benefits for women (ILO World Commission, 2004 and ILO Director-General, 2003). While both men and women are moving to the informal economy, women together with other disadvantaged workers, such as racial and ethnic minorities and the disabled, usually predominate in that sector, depending on the economy. So-called male standard

jobs with full time income, statutory protections and benefits, located at an employer's premises, have never reflected female work as most women have been excluded from this work. While men, even poor men, usually hold a more privileged position relative to poor women, that advantage is narrowing as the "new economy" harmonizes down and eliminates many of the more secure, well-paying jobs previously held by men (ILO World Commission, 2004, ILO Director-General, 2003, Cornish, Faraday and Verma, 2004 and Armstrong, 1996).

The predominance of women in precarious employment in both the formal and informal economy reflects the disadvantages women face in the labour market and the economic restructuring of the new economy. With the increasing shift to performance-based pay, home-based work and export processing zones, there is an increasing specific demand for cheap female labour. Contractualization or flexibilization of labour means that many regular jobs are being replaced by "temporary" workers with no benefits, many of whom are women. With trade liberalization, many women have lost their livelihoods in the agricultural sector and face discrimination as producers in gaining access to the new economy activities (ILO World Commission, 2004, Cornish, Faraday and Verma, 2004).

Globally, migrant labour today is integral to many sectors, including agriculture, construction, labour-intensive manufacturing, domestic work, and the sex sector. Practices such as the trafficking in women and young girls and the smuggling of migrants has created a further class of precarious workers. Ethnic and racial minorities, indigenous and tribal peoples and migrant workers are common victims of racial discrimination in employment and occupation where prejudice is used to legitimize discrimination against them (ILO World Commission, 2004, International Labour Office, 2004, ILO Director-General, 2003, Cornish, 2003, and Durban Declaration, 2001).

The global push to move large numbers of female labourers, migrants, indigenous peoples and other minority work groups outside of the standard employment of the formal labour market is not a discrete phenomenon of the developing world. In more industrialized countries, the informal and non-standard sector is also expanding to include new workers into the labour force and to absorb workers from the formal sphere who have been rendered redundant by economic crisis, downsizing or structural adjustment. In the United States and Japan, for example, women's share of part-time employment has risen throughout the 1990's to just under 70 per cent (Cornish, Faraday and Verma, 2004). Women continue to be disproportionately affected by the lack of employment in the private sector and reduction of jobs in the public sector. The non-standard work that is available perpetuates cycles of permanent temporary employment or no employment at all. At the same time, public sector funding crises, privatization and social sector restructuring have reduced women's access to day care, basic education and retraining, and other employment-enhancing strategies.

### **Women's Burden of Family and Household Responsibilities**

A critical feature of the disadvantage women experience in the labour market flows from their domestic and child care responsibilities, which often lead to their taking low or non-paying flexible jobs with little or no protection. There are increasing reproductive, family and household demands on women, with more women working in their reproductive years. Women suffer from "time poverty", working many more hours than men at their paid and unpaid jobs (UN, 2000 and Hochschild, 1997). This is exacerbated by the reduction of public sector services such as health care and child care. Precarious employment cannot be seen as a "free" choice in the context of these unequal relations of social reproduction (Vosko, 2003). The new globalized employers looking for cheap

and flexible labour continue to take advantage of the vulnerable situation of female parents looking for any work and flexible work if possible (Cornish, Faraday and Verma, 2004).

## **Gender-Based Occupational Segregation**

The occupational segregation of men and women by gender is a worldwide phenomenon regardless of level of development, with men dominating higher-paying production jobs and women dominating lower-paying "caregiving" and home-based jobs. Studies show that low pay and flexibility are associated with typically "female" occupations because they are "female" (Armstrong and Armstrong, 1994 and Armstrong and Cornish, 1997). This gendered job segregation, stereotyping and undervaluation of women's work underpins the world-wide gender order, with men's work considered superior economically, socially and legally (International Labour Office, 2004, Ruwanpura, 2004 and ILO Director-General, 2003).

Women are segregated both horizontally (employed in different occupations across occupational structure) and vertically (employed in different positions within the same occupation) (UN, 2000). Gender discrimination in the labour market and in the workplace is found in all different work situations and forms of employment in all economic sectors, regardless of whether the work takes place in the formal or the informal economy. Employees in large high-tech businesses, wage earners in informal enterprises, lawyers, farmers and the self-employed may all suffer from discrimination in one form or another. At the same time, the form of the discrimination is constantly changing (ILO World Commission, 2004, Cornish, 2003, UNIFEM, 2002, and UN, 2000).

Normally, individuals who face employment discrimination in accessing a job tend to continue experiencing discrimination while in the job, in a vicious cycle of cumulative disadvantage. (ILO Director-General, 2003). For other workers, access to employment may not be the main issue. Preferential demand for female labour relative to male labour in the textile and garment industries in export processing zones is an often-cited example. More jobs for women in that case are normally not accompanied by either enhanced security of tenure or better career prospects (ILO Director-General, 2003).

Women are also denied access to men's jobs as a result of the different human capital they bring to the labour market with many barriers to gaining equal access to education and training. Of the 900 million illiterate people world-wide, women outnumber men two to one (Ruwanpura, 2004, UN, 2000 and Armstrong and Cornish, 1997).

Women's full integration into the labour market continues to be resisted and surrounded by patriarchal stereotypes, prejudices, misconceptions and culturally-based expectations about gender roles and what constitutes "valuable work" (ILO Director-General, 2003, Cornish, 2003, Armstrong and Cornish, 1997). The rising importance of religious fundamentalism has also contributed to the reassertion of traditional women's roles (Obando, 2003). These powerful gendered perceptions of women's inferior status persist even though the international community recognizes formally that gender inequality tends to lower labour productivity, intensify the unequal distribution of resources and contribute to the non-monetary aspects of poverty – lack of security, opportunity and empowerment (World Bank Gender and Development Group, 2003).

## Gender-Based Pay Discrimination

Women represent 60% of the world's 550 million working poor (International Labour Office, 2004) While the differential between men's and women's earnings has narrowed in many countries, women continue to receive substantially less pay than men. The past twenty years have seen an improvement in women's average monthly wage in the vast majority of 63 countries with available figures, although none of these countries had yet achieved equal average wages (UNIFEM, 2002 and International Labour Office, 2004).

Examples of the gender-based wage gap can be detected across industries. In manufacturing, for example, in 13 out of 39 countries, women earn up to 20 per cent less than men. In Finland, the income of female wage and salary earners was, on average, 80 per cent that of men in 1993, while female managers earned 66 per cent of the salary of male managers. In the United Kingdom, women professionals earned 17 per cent less than men in 1996 and women managers earned 27 per cent less than men. In Uruguay, earning of women managers in the banking and finance sector were as little as 47 per cent of those of men in 1995 (ILO World Commission, 2004 and UN, 2000). As well, in high-skill occupations where presumably skills and qualifications are comparable (e.g., accountant), the average female wage is 88 per cent of males (International Labour Office, 2004). Even in typically female occupations, such as teaching, gender wage equality is often lacking (International Labour Office, 2004). There is also evidence that in some circumstances, the wage gap is widening – or at least not decreasing (International Labour Office, 2004). In New Zealand, over the last 30 years the wage gap has narrowed but slowly and unevenly with the average female wage now 87.1 per cent that of male's (Pay and Employment Equity Task Force, 2004).

The gender wage gap is affected by many factors including changes in the overall wage structure, labour market skills and productivity and gender-specific factors such as remuneration of skills. Racism and other intolerance further reduces the wages of women (ILO World Commission, 2004, Pay Equity Task Force, 2004).

Dr. Pat Armstrong, a Canadian expert recognized world-wide in the field of pay discrimination and women's work describes the nature and roots of the problem of pay discrimination for women in the labour market:

- 1 "Because of their gender, women as a group experience significant discrimination in their compensation throughout the economy. This systematic underpayment persists in spite of substantial evidence indicating that women do work that is both valuable and necessary and that women want and need the same kinds of incomes as men.
- 2 A large body of evidence demonstrates that this discrimination in women's compensation arises out of three fundamental features associated with women's work. Each contributes to the systemic gender discrimination in compensation. The three features are:
  - a Women are segregated from men into different work and different workplaces. The labour force is divided along gender lines across occupations and industries. To a large extent, women and men do different work in different workplaces. There are still "men's jobs" and "women's jobs";
  - b The gender segregation of the labour force is accompanied by wage inequality. Female-domination of a job and low pay are linked. In general,

women's segregated work is paid less than men's work and the more women concentrated in a job, the less it pays. The data on the labour force as a whole indicates that work mainly done by women is consistently paid less than the work mainly done by men, with little regard to the value of the work to the employer or the consumer.

- c Lower pay reflects the systemic undervaluation of women's work relative to that of men's work. Many of the demands, conditions and contributions of women's work are invisible and undervalued both because so many women do these jobs and because female-dominated skills, effort, responsibilities and working conditions are associated with unpaid domestic or volunteer work. Yet such skills are essential to the employer and are acquired over time, through training, even though they are often undervalued relative to those of men. Moreover, many of these women's jobs are highly demanding, but in ways so long associated with women that they are thought to be part of being a women.
- 3 These three factors combine to create pervasive discrimination. The three characteristics of women's work are generally present regardless of the particular nature of women's work, her industrial sector, her own capacities, her employer and the presence or absence of male comparators in her workplace. This systemic discrimination against women in terms of compensation is widely acknowledged internationally in research literature, and in public policy.
- 4 The size and persistence of the wage gap clearly indicates that the problem does not stem simply from individual women and their capacities or from the practices of a few employers. Although there are certainly differences in the way individual women are treated by individual employers, women as a group face a common set of practices that disadvantage them in the labour force.
- 5 Characteristics of employees, such as experience, formal education and training - factors usually considered as a legitimate basis for wage differences, cannot explain much of overall differences in pay between women and men. Nor can the characteristics or demands of the jobs justify much of the wage gap.
- 6 Segregation alone provides part of the explanation for unequal wages. That is, there are only a few women in many male jobs which are compensated at a higher level than women's jobs on the basis of valid and legitimate criteria, such as job demands or differences in education and experience that are required to do the work.
- 7 But the rest of the explanation can be found in the failure to recognize and value the skills, effort, responsibility and working conditions associated with female-dominated jobs. The more female-dominated the industry and occupation, the more likely the discrimination. Indeed, discrimination of this kind is most likely when only women work in an industry and when there are no characteristics of the sort traditionally associated with, and valued in, male work.
- 8 In summary, there is extensive and thorough research indicating that the relationship between low wages and women's work in a segregated market cannot mainly be explained by factors recognized as a legitimate basis for different wages. Rather, this relationship can primarily be attributed to systemic discrimination" (Armstrong, 2001 and 2002).

Occupational segregation is therefore the central mechanism for perpetuating women's secondary status and the patriarchal system. Such segregation reinforces the gender division of labour, pays low wages, results in women's inferior jobs and benefits and maintains women's economic dependence and weakened power in the labour market. The use of undervalued and underpaid female labour by employers in the new economy has further reinforced women's employment ghettos.

## **PART II: PAY AND EMPLOYMENT EQUITY - INTERNATIONAL HUMAN RIGHTS STANDARDS**

### **Introduction**

The elimination of the systemic employment discrimination highlighted in Part 1 requires a multi-faceted approach aimed at all the societal factors which impede women's economic equality. This paper focuses on the role of pay and employment equity policies in bringing a measure of social and economic justice and providing decent work for all women who work or seek to work. These policies target the central problem which is the world-wide occupational segregation of women. Redressing this discrimination requires both pay and employment equity/affirmative action remedies.

Pay equity means human rights laws and policies designed to address one aspect of women's unequal position in the labour force, namely the undervaluing of women's work based on prejudice and discrimination; that is, the work performed predominantly by women. It provides that neither women nor men should be discriminated against in their pay for doing traditional women's work. Employment equity means human rights laws and policies designed to remove the systemic barriers facing women in their job ghettos and preventing them from accessing men's work. With the benefit of data showing the gender-based structure of labour market occupations, pay and employment equity laws and policies improve the conditions of women's current employment as well as develop measures to allow women to move to male-dominated work with better pay, more security and social protections (Cornish, 2003, ILO Director-General, 2003 and Armstrong and Cornish, 1997).

### **Pay Equity**

Pay equity laws and strategies tailored to the circumstances of women's work in each country help to identify and dismantle long-standing patterns of systemic compensation discrimination by requiring pay equity adjustments to the compensation of female work found undervalued in relation to comparable men's work. Such adjustments are not "wage increases", and they are not "just pay". Rather, they are human rights remedies. Since the undervaluation of work associated with women is fundamental to women's low socio-economic status, pay equity strategies are an important way to establish the overall conditions for women's equality (Cornish, 2003 and Armstrong and Cornish, 1997)

Women's employment compensation can be set by laws (minimum wage and collective bargaining rules), by business or market practices, or by other institutions (union practices). Pay equity measures, therefore, need to be multi-faceted and address all those mechanisms as well as a country's specific structure of labour market regulation. These measures, depending on the labour market, can include: laws establishing minimum wages; promoting collective bargaining in the areas where women work;

establishing pay equity laws to require women's jobs to be paid on a comparable basis as men's jobs; and, finally, special measures for improving the income received by women from the informal economy including sectoral wages and assistance for female micro-enterprises. An example of a proactive equal value law is Ontario's *Pay Equity Act* which covers the public and private sector and requires employers and unions, if any to identify and remedy inequitable compensation practices for women's work (Cornish, 2003).

## **Employment Equity**

Employment equity laws and measures can take a variety of forms as they are all aimed at eliminating the many different barriers women and other designated groups face in accessing and benefiting equally from the labour market. Employment equity laws and policies usually provide for proactive employment measures which will identify the gender barriers women face and then require the design of special measures and accommodations to address the inequalities.

Examples of proactive employment equity laws include Canada's federal *Employment Equity Act* and South Africa's 1998 *Employment Equity Act* (modelled on the Canadian law). These require employers, in collaboration with employees and unions where they exist, to conduct a workforce analysis to identify the under-representation of disadvantaged groups, and review any employment systems, policies and practices in order to identify employment barriers facing the disadvantaged groups in relation to recruitment, job classification, remuneration, employment benefits, terms and conditions, promotion, retention, and dismissal. Laws and policies typically oblige employers to prepare short- and long-term plans with measures to remove employment barriers as well as positive policies and practices to facilitate disadvantaged groups including reasonably accommodating differences including women's family responsibilities. Many laws and policies also provide for numerical goals and timetables for hiring and promotion to correct under-representation. Plans can also include prohibitions against sexual harassment and workplace violence as well as complaint mechanisms. (Cornish, 2003 and Poole, 1994).

The disadvantaged groups covered by Canada's federal law are women, racial minorities, aboriginal peoples and persons with disabilities. South Africa's law also attempts to address a situation facing women in precarious employment by deeming the clients of a temporary employment service to be the employer where the job is of sufficient duration. India also has employment equity measures for dealing with the social exclusion of the "untouchables" (Jain, 2002). Such employment equity measures with appropriate training help to change discriminatory workplace cultures (Cornish, 2003).

## **Pay and Employment Equity: Fundamental Human Rights**

The rights to pay and employment equity, i.e. to employment free of gender discrimination are fundamental human rights. Over the past century, these rights have been enshrined in a wide range of binding international instruments.

Pay equity was one of the earliest rights to be recognized and formally codified as an international human right and labour standard. It was counted among the nine founding principles of the International Labour Organization in 1919. Explicit directives for achieving pay equity were adopted in ILO Convention No. 100 in 1951 and the Convention has been explicitly ratified by many countries worldwide.

Employment equity or the right to employment and occupation free of gender discrimination was also a founding principle of the ILO and has been reinforced and further developed over the years, through many UN and ILO instruments. One of the most important and widely-supported is the ILO Discrimination (Employment and Occupation) Convention No. 111.

In its 1998 Declaration of the Fundamental Principles and Rights at Work, the ILO confirmed pay and employment equity as two of the eight "Fundamental Conventions". All member states are under a particular duty to observe these Conventions as a result of their ILO membership, regardless of whether the individual Conventions have been ratified (ILO Constitution, Preamble and ILO Declaration). The predominance of both principles on the international stage is due to the realization that employment equality is interconnected with and necessary to sustain all other economic, social, civil and political rights. In particular, the achievement of pay and employment equity is linked to the achievement of other fundamental labour rights, including freedom of association and the right to collective bargaining. (Cornish, Shilton and Faraday, 2003).

## **International Human Rights Requirements**

The international equality standards set out in human rights instruments have imposed increasingly specific directives for action to be taken by signatory states in order to achieve full equality in employment. In particular, the instruments use strong language requiring government and employers to ensure equality outcomes for women in practice and mandating regular reporting to monitor compliance. Compiled in the Annex to this paper, are the principles and obligations that emerge from these international law instruments and should inform the design of pay and employment mechanisms. (Cornish, Shilton and Faraday, 2003). These key principles and obligations can be summarized as follows:

### Pay Equity

- The principle of *equal pay for work of equal value* or pay equity must be guaranteed, requiring that women's jobs where comparable to men's jobs must have equal compensation.
- Equal pay for work of equal value is a fundamental labour standard of the highest priority, necessary for building a sustainable, just and developed society.
- Governments must enact pay equity legislation covering both the public and private sector to ensure that the full and practical realization of the right is guaranteed and achieved "without delay" with the necessary mobilization of adequate resources to achieve that goal.
- Pay equity must break the cycle of systemic discrimination by providing a framework to challenge systemic assumptions and practices that lead to the undervaluing and under-compensating of women's work.
- Employers have a proactive obligation to achieve pay equity in their workplaces.
- Pay equity laws should require specific gender inclusive or gender neutral methodologies for evaluating and comparing the different jobs that men and women do and for reformulating wage structures of female-dominated jobs.

- Unions and representatives of non-unionized employees must be afforded an active role in developing and enforcing pay equity.
- Complaints regarding lack of pay equity must be enforceable before a competent and expert tribunal with meaningful sanctions for non-compliance.

### Employment Equity

- The principle of employment equity must be guaranteed, requiring equality of opportunity and treatment in employment and occupation for all women, including those who are disadvantaged on the basis of race, colour, indigenous status, religion, disability, political opinion, national extraction or social origin.
- Employment equity is a fundamental labour and human rights standard and should be part of a country's constitution.
- Governments must enact employment equity legislation in the public and private sector to ensure the right is guaranteed and must mobilize the necessary resources to achieve the right for all workers, full-time and part-time.
- In preventing employment discrimination, the multiple and intersecting forms of discrimination experienced by individuals must be taken into account.
- Women's right to free choice of employment, the right to promotion, job security, equal benefits and conditions of service, and the right to receive vocational training and retaining must be ensured.
- Unions must be afforded an active role in promoting employment equity.
- Working mothers must be free from discrimination and government must promote programmes and policies that enable women and men to reconcile their work and family responsibilities. Family support services and flexible working arrangements should be provided by the employer.
- Employment equity for disabled persons should be achieved through various measures, including incentive-oriented quota schemes, designated employment, loans or grants for small businesses, contract compliance, and tax concessions.
- Governments must enact and supervise legislation and other measures for employment equity for indigenous and tribal peoples and racial and ethnic minorities.
- Employment equity must be enforceable before a competent and expert tribunal, and the remedies must be effective and enforced when granted.

## **PART III: BUILDING EQUITABLE LABOUR MARKETS - THE BUSINESS AND DEVELOPMENT IMPERATIVES**

*"Investing in women's capabilities and empowering them to exercise their choices is the surest way to contribute to economic growth and overall development".  
United Nations Development Report, 1995*

While Part II reviewed the human rights imperatives requiring equitable labour markets, this Part sets out the business and development case for gender equity. Systemic discrimination against women impoverishes not only women but society as a whole. It is well established that labour markets without appropriate social safeguards will not lead to equitable economic growth (World Bank, 2002 b). Given that a poor woman's main asset is her labour, taking steps toward labour market equality and inclusiveness reduces the risks faced by the poor and is a key poverty reduction strategy. There is a world-wide consensus that without poverty reduction, just and sustainable development is not possible. Excluding women from decent work creates serious problems of poverty (International Labour Office, 2004, ILO Director-General, 2003, Cornish, 2003, UNIFEM, 2002).

Recent social protection strategies have focussed on labour issues and the importance of the ILO's core labour standards, requiring pay and employment equity measures and promoting collective representation (World Bank, 2002 b and ILO, 2002). There is also a growing recognition of the long term positive economic and social benefits of "equitable" workplaces as opposed to any perceived short term advantage of undercutting a competitor (Betcherman et al, 2002).

Businesses require the efficient functioning of labour markets for business competitiveness. The elimination of discrimination is key to this goal. A pool of employees that fails to represent the diversity of society in terms of factors such as age, sex, indigenous status, religion, race or abilities/disabilities is less likely to satisfy the needs of a customer base that is becoming increasingly heterogeneous as a result of the globalization of markets and production. Providing women with equality in employment increases the human resources available to employers and allows such potential to be deployed more effectively. Evidence shows that constraints on the employment of women translate into higher labour costs through the contraction of labour supply. Conversely, greater equality in the distribution of productive resources and in education between men and women leads to higher productivity and growth (World Bank, 2002 a). Increasing workers with access to decent work enlarges development options. Socially inclusive workplaces can pave the way for more egalitarian, democratic and cohesive societies (ILO Director-General, 2003 and International Labour Office, 2004).

In order to reap the benefits referred to above, businesses must make pay and employment equity planning part of their short term and long term business development strategies. Such planning contributes to the bottom line by broadening and expanding the base of qualified individuals for employment, training, and promotion and by reducing the waste associated with under-utilization of workers' skills as employees' are accurately judged on merit and abilities rather than prejudice and stereotyping. Once pay and employment equity are in place, the costs of turnover are reduced, as retaining skilled women workers becomes possible. Organizational commitment to equality will also positively affect recruitment practices, with United States studies showing that affirmative action employers have more efficient recruitment and screening systems than other employers. Businesses also benefit from an equity planning approach which enhances the organization's ability to effect change in a competitive environment (ILO, Lim, 1996, and Armstrong and Cornish, 1997).

Workers who are treated fairly and supportively work with greater commitment and goodwill for the organization. Staff turnover, absenteeism and sick leave rates are likely to be lower, with significant cost savings for employers. With enhanced employee morale and commitment, both employees and the organization itself flourish. The adaptability to

change – essential in the new economy – appears to be higher when equal employment opportunities act in combination with other policies aimed at raising workers' participation in decision-making. Stress, low morale and lack of motivation, prevalent sentiments among those subject to discrimination, results in undermining of self-esteem and reinforces prejudices against such workers. This leads to productivity losses not only for the workers but for the business as a whole.

Businesses that proactively implement equitable policies also avoid costly employee equity complaints (ILO Director-General, 2003 and ILO, Lim, 2003). Equitable policies also positively increase the public image of business who gain a competitive edge in recruiting and customer development (Poole, 1994 and Lim, 1996). Establishing pay and employment through corporate social responsibility is also an important new consideration in business strategy and customer recruitment and retention. An emerging new pay and employment equity protection for women workers world-wide has been the corporate codes of conduct instituted by high-profile apparel or manufacturing companies to improve the conditions of the primarily women workers who work for their supply chain contractors. These workers, often in export processing zones, are vulnerable to abusive conditions. Campaigns aimed at the consumers of businesses such as the Gap, Nike and Tommy Hilfiger have persuaded companies that it is in their business interest to improve the conditions of the contractor's workers (Cornish, Faraday and Verma, 2004).

Women and other disadvantaged groups are repeatedly faced with the argument that redressing equality is too expensive. This economic argument fails to acknowledge the benefits of equality and costs of discrimination as outlined above. It also fails to see that the cost of achieving equality – the cost of redress – is proportional to and reflective of the extent of the discrimination experienced. To use cost of redress against women claimants is to penalize them doubly in that the claimants have already suffered long-term discrimination. The resulting quantified material disadvantage and the magnitude of the government's delinquency – the size of this equality debt – is then relied upon as a reason not to pay redress.

Harnessing the full potential of a country to compete in a globalized world requires unleashing the full productive potential of its labour force. The creation of workplaces that are representative and respectful of the gender racial, ethnic, indigenous and religious diversity in a society are indispensable to productivity gains and to generate an overall climate of tolerance and pluralism (ILO Director-General, 2003). Nation states will not develop or prosper without ensuring the full participation of women and men in all aspects of economic, social and political life.

## **PART IV: ACHIEVING PAY AND EMPLOYMENT EQUITY - ISSUES TO CONSIDER**

### **Transformative Measures are required**

The structural and persistent inequalities outlined in this paper permeate the economic, social, and political lives of men and women and constitute a powerful barrier to the implementation of pay and employment equity laws and policies. Gender inequality is so entrenched in the world's labour markets that progress must be made on many fronts in order for women to be able to break out from the web of inequalities they face. Engendering the labour law system requires more than just enacting better workplace labour laws and enforcement measures, although these are essential steps. For women,

securing gender justice in labour markets requires a combination of transformative measures which are aimed at every aspect of women's inequality (Cornish, Faraday and Verma, 2004).

### **The Role of the Nation State and the Market**

The state plays the central role in labour market regulation by ratifying international instruments and establishing effective laws, policies and institutions to translate those obligations into justice mechanisms women can enforce.

Given the power of employers and the immediacy of employment and profits, the issue of whether and how to regulate the labour market is very controversial. There are generally two opposing public policy views. The "institutionalist" view sees collective bargaining, minimum wages, anti-discrimination laws and job security provisions as essential social protection for workers and as the means for increasing equitable economic growth and moderating economic declines. The "distortionist" view sees the welfare state as obsolete and such regulations as interfering with economic growth, discouraging hiring and favouring "regular" workers (Betcherman et al, 2002). In the context of promoting gender equality, the issue is which approach produces the most favourable outcomes in reducing discrimination. Using this test, the answer is clear. It is precisely because the market in general and employers in particular have not provided decent and equitable jobs and wages that women have demanded state intervention to protect them. Yet, world-wide moves to deregulate labour and business markets, often combined with moves to dismantle state institutions and to privatize state functions and assets, are increasing the inequality facing women. In fact, women often look to such laws and institutions to protect them from labour market inequalities (Cornish, 2003, Betcherman et al, 2002, ICFTU, 2002 and Armstrong and Cornish, 1997).

While corrupt and inequitable state practices can also increase women's inequality, the degree of gender discrimination permeating the labour markets and the widespread violation of women's fundamental human rights requires more rather than less government intervention. Direction and enforcement from state laws and institutions which are free of corruption and gender-sensitive are necessary in order to establish equitable rules for women's employment. Even with these in place, enforcement is a continuing struggle (Cornish, 2003).

### **Understanding Discrimination and Gender Differences**

Discrimination is the result of complex social interactions and prejudices within the workplace and society as a whole. The strategies required to eliminate particular forms of discrimination must appreciate the complexity of the social and workplace cultures, which permit it to flourish in the first place. Women's experiences at work and in society vary dramatically from men's and these differences are felt by region, by countries, and even within countries. While the lack of decent work is a world-wide issue, the particulars of the gender discrimination are dependent on the country and on women's age, location, education level, class and ethnicity. Equality measures must be based on a specific and clear understanding of the social, economic and political labour market barriers facing women (Cornish, 2004).

## **Multiple Disadvantages Faced by Women**

Discrimination is often based on an assumption of white, male, able-bodied or heterosexual superiority. It is, therefore, commonly interwoven with discrimination on other factors such as race, ethnicity, indigenous status, disability or sexual orientation. The gender-based pay and employment discrimination suffered by multiply disadvantaged women is often different and is usually more acute. This reality must be considered and addressed in identifying and redressing discrimination remedies (Cornish, Faraday and Verma, 2002 and 2004).

## **Taking on Patriarchal Values and Constraints**

A recent ILO study by Kanchana N. Ruwanpura, *Quality of Women's Employment: A Focus on the South*, reflects on the considerations and measures that must be taken to implement labour market gender protections. This study underscores the need to specifically acknowledge and address the dynamics of the social, cultural and patriarchal values and institutions which affect the perceptions of women and their work. Effective measures to provide more and better jobs for women require state actors and social partners to develop mechanisms which address these social and institutional labour market constraints. Otherwise, women's attempts to secure a better position in the labour market will continue to be frustrated by social and cultural norms that label women as secondary or marginal. Promoting equality requires promoting long-lasting changes in parental roles, family structures, institutional practices, the organization of work and time, personal development, independence, and the involvement of men (Cornish, Faraday and Verma, 2004).

## **National Gender Plan**

Establishing and maintaining labour justice for women requires a gender-sensitive planning and implementation process. This process must collect the necessary gender-based data on women's and men's employment and then use that data to mainstream gender policy. As mandated by the *Beijing Declaration*, national plans should be developed to include specific measures to reduce gender inequalities in the laws and institutions which influence women's economic opportunities including: labour force participation measures including activity rates, unemployment, share of total employment, pay gap, pension and benefits, and access to economic opportunities. Such analyses should also incorporate a perspective based on women's multiple disadvantages.

Equity strategies must identify and address the gendered factors which contribute to women's poverty and inhibit labour force participation and equity in a particular country – including income opportunities, education, health, housing, life-expectancy as well as risk, vulnerability, powerlessness, and inability to be heard. With data gathered on the conditions of both women's and men's work, the state can then move to ensure that labour market regulations properly covers the protections needed to address the sectors where women work (Cornish, 2003).

## **Addressing the Needs of Women in Precarious Employment**

Given women's predominance in precarious employment in the formal and informal economy, the first step is to use gender data to understand country - and region-specific information about where women's precarious employment is located. The next step is to

develop labour protections that will address the needs of these particular workers. This means rethinking labour law protections to adapt to the needs of these very diverse sectors. Measures must be developed to strengthen the protections women have in the non-standard formal sector where they are usually part-time and often have no benefits or job security. This includes easing restrictive protective laws to ensure women have access to all forms of work and reducing barriers to obtaining "standard" employment.

For many women in the informal economy, their status is most likely to be own account, self-employed or home-based workers. Labour protections in this context may mean measures to provide equitable access to micro-credit, marketing information and other entrepreneurial supports. Successful strategies in this area focus on providing such workers with networking and educational opportunities which build towards self-reliance, independence and improved productivity. As women occupy the lowest paid, lowest skilled jobs in the informal sector, other measures include providing training for women to undertake the specialized higher status and paying "male" jobs in the informal sector which are often held by men. Migrant women workers, including refugees, trafficked workers and smuggled immigrants, although not citizens, must receive appropriate protections and should not be subjected to substandard and inhumane conditions of work. Action is particularly necessary in this area as many of such workers are also discriminated against as result of their race, ethnicity and indigenous status (Cornish, 2003, ILO Director-General, 2003, ILO World Commission, 2004 and Cornish, Faraday and Verma, 2004).

### **Women's Reproductive, Family and Household Responsibilities**

Labour market laws and policies must adapt to recognize the links between family and work, to fairly distribute the costs and responsibilities of social reproduction among women, men and society and to adopt measures which accommodate for these social reproduction responsibilities. Parental leave and benefit policies are a way to acknowledge and cross-subsidize the economic costs of parenting which have historically fallen on women's shoulders. They should be recognized as necessary features of a workplace where women work. Actions are not to be taken to evade such responsibilities and avoid hiring women. Supportive measures such as child care are needed to level the playing field for women. Measures are also necessary to help facilitate family economic activity, including cottage industries and agricultural work as well as assistance in household activities (Cornish, 2003 and Cornish, Faraday and Verma, 2004).

### **Organizing Women Workers and Promoting Core Labour Standards**

The informalization of the economy has weakened the power of trade unions and collective voice representation. Workers are often no longer in a traditional one-site workplace which historically facilitated union organizing. Home workers and small workshops are often "invisible" and difficult to organize. Where organizing has been successful, such as the unionization of certain domestic workers in Namibia and the organizing of market traders in Cote D'Ivoire and Burkina Faso, this has often been attributed to such organizing efforts being supported by ILO projects. These projects provide the organizing women with access to funds, marketing and training initiatives. This highlights the critical importance of institutional support and capacity building in facilitating the collective voice representation of women workers. It also points to the need to promote compliance with the ILO's core labour standards, including freedom of

association and the right to be free from employment discrimination (Cornish, Faraday and Verma, 2004).

Given the resistance to unionization, the state must establish a strong and supportive legal and policy environment that encourages and protects collective bargaining rights. The state must extend it innovatively to the areas where women work in precarious employment. This could include encouraging bargaining for sectoral and national wages. Centralized bargaining has traditionally tended to favour equality concerns. In the United Kingdom, in Australia, and in New Zealand, the decentralization of the industrial relations framework has had a negative impact on bargaining for gender equality, particularly for equality in remuneration (ILO Director-General, 2003). Such bargaining is particularly helpful for those in precarious jobs, such as employment agency or household workers or to work together for access to credit where self-employed. Laws must require unions to represent women workers without discrimination and to ensure they are independent from government and business control. Consistent with the recommendation of the ILO Committee of Experts, labour and equality rights laws should be integrated so that unions and employers work together to ensure women's labour rights are protected (ILO Director-General, 2003 and Cornish, 2003).

Transformative labour market reforms are those which empower women as partners and active agents in the reform process. While trade unions provide an important collective voice for women to promote equality measures, most women worldwide either have no access to a union or have not joined unions because they have been undemocratic or male-dominated. Women NGOs, both at the local and national level, continue to play an indispensable role in advocating for reforms with local and national businesses and governments. This role must be supported by state and international actors and institutions (Cornish, Faraday and Verma, 2004).

## **Minimum Wages**

While controversial, there is research to support the use of minimum wage laws as a gender equality and poverty reduction measure since women are primarily found in the lowest pay ranges. Higher minimum wages have been shown to reduce the dispersion of earnings and incidence of low pay in developed countries (Betcherman et al 2002 and Armstrong and Cornish, 1997). While there has been concern that minimum wage laws may be less effective in developing countries as a result of limited coverage and lack of enforcement, recent research has shown that minimum wages do have an impact in the informal sectors (Lustig and McLeod, 1997 and Cornish, 2003)

## **Effective Enforcement and Dispute Resolution**

Denial of equal opportunities, treatment or dignity at work require particularly responsive enforcement systems to ensure that equality laws are applied to all workers (ILO Director-General, 2003). Effective enforcement of pay and employment equity measures requires the strengthening of labour market enforcement mechanisms, which in turn requires resources and political will.

While international instruments clearly require signatory countries to establish effective laws and institutions to allow women to redress labour market violations, most countries do not have effective laws. The laws that are in place are often inaccessible to women who lack the resources to access the legal system. Most enforcement systems are complaints-based and thus rely on individual workers, their representatives or

administrative officials to trigger their operation. Given the systemic nature of labour market gender discrimination and the limited available resources, a complaint-based approach is generally ineffective and too slow to achieve significant equality results. It is for this reason that international instruments require states, employers and unions to take a proactive approach to redressing gender equality by identifying the systemic problems and developing systemic solutions. Given the strong "political" dynamics of the labour market and the necessity to ensure the rule of law, mechanisms must be developed to enforce these solutions.

The complexity of enforcement issues combined with the competing priorities for government resources and existing weak structures require the development of new innovative enforcement approaches, setting country-wide priorities for compliance issues. Effective enforcement requires that all human rights complainants have access to a body or an institution that can address complaints. The body or institution must provide an effective remedy and impose sanctions for non-compliance and wrongful reprisals if required. This can include administrative tribunals and state investigations. Effective enforcement also requires providing access to legal aid for vulnerable persons seeking to enforce their rights. On-going monitoring, reporting and follow up within a defined time frame are necessary in order to ensure the practical implementation and realization of equality. A strong and resourced sanctions and anti-reprisal policy must be enshrined in labour laws to protect workers and their organizations. These approaches should co-exist with "softer" compliance approaches, focussed on: providing technical assistance to workplace parties; developing enterprise-wide plans to improve work conditions; the use of alternative dispute resolution to provide fair and expeditious resolution; and, involving social partners, partners trade unions and NGOs (Cornish, 2003, Armstrong, Cornish and Millar, 2003 and Cornish, Shilton and Faraday, 2003).

## **Other Measures**

Tackling women's low incomes requires many different laws and measures. Educating girls and women is one of the fastest ways to open up the labour markets for women. Co-operatives help to redress women's unequal access to other economic resources, including land and capital which form the basis for access to credit.

## **CONCLUSION**

As this paper shows, ensuring pay and employment equity for women requires results-based, outcome-directed steps to be taken by governments, employers and unions to ensure that the international gender equality standards are felt at the national and local levels and become a reality for the world's women in their daily lives. As the structure of women's employment is constantly in flux with the new economy, pay and employment equity measures will similarly need to constantly adapt to ensure measures are addressing the inequities women face as they increasingly face precarious employment.

Labour market regulation is a critical lever of public policy to be used by a country to provide its women workers with the right to function equally with men. With many businesses relying on exploiting cheap female labour and many men refusing to give up their privileged positions, changing women's labour market status engages a very heated debate. Yet women and their organizations, working with unions and other NGOs, are mobilizing for transformative legal and economic pay and employment equity changes. Fundamental to this transformation is an understanding that achieving women's equality

is not a women's issue but a local, national and international issue of the highest priority for ensuring sustainable development.

While equality promoting laws as set out above are an important and necessary first step, they are not sufficient. Progressive laws often coexist with growing inequalities in labour force participation, income and access to decent work because the laws are not enforced or supported. Urgent action is needed to make real progress. Just as the world of work is being transformed by the drivers of the new globalized economy, so must the world's workplaces be transformed and engendered to be inclusive of the world's female workers. Given the similarity of world patterns of labour market inequalities and the globalization of state economies, both industrialized and developing countries can learn from each other about effective pay and employment equity strategies.

## ANNEX

## PAY AND EMPLOYMENT EQUITY FOR WOMEN: INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The following pay and employment equity obligations flow from international human rights instruments.

### A. PAY EQUITY

#### Basic Principles and Obligations

The principle of *equal pay for work of equal value* or pay equity must be guaranteed; requiring that women's jobs where comparable to men's jobs must have equal compensation. ILO *Equal Remuneration Convention (No. 100)* (ILO *Convention No. 100*), Article 1; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, Article 7; *Convention on the Elimination of Discrimination Against Women (CEDAW)*, Article 11; *Beijing Platform for Action (Beijing Platform)*, Paras. 165, 166, 175, 178

Equal pay for work of equal value is a fundamental labour standard of the highest priority, necessary for building a sustainable, just and developed society. ILO *Declaration on Fundamental Principles and Rights at Work* (ILO *Declaration*); *CEDAW*, Preamble; *Beijing Platform*, Para. 41

Governments must enact pay equity legislation to ensure that the right is guaranteed. ILO *Convention No. 100*, Article 2(2); *CEDAW*, Articles 2(b), 2(f); *Beijing Platform*, Paras. 165(a), 178(a)

Pay equity or the elimination of the "compensation gap" between men's and women's jobs must be achieved "without delay". *CEDAW*, Article 2

Pay equity must break the cycle of systemic discrimination by providing a framework to challenge systemic assumptions and practices that lead to the undervaluing and under-compensating of women's work. *CEDAW*, Preamble

Governments must ensure the full and practical realization of the right to equal pay for work of equal value. *CEDAW*, Articles 2, 24; *Beijing Platform*, Para. 175(k); *ICESCR*, Articles 3, 7

Governments must signal that they have made a strong commitment to achieving pay equity, that they have dedicated themselves unreservedly to achieving pay equity, and that they have mobilized adequate resources to achieving pay equity. *CEDAW*, Articles 2, 24; *ICESCR*, Article 2; *Beijing Declaration*, Para. 7; *Beijing Platform*, Paras. 4, 5

Employers have a proactive obligation to achieve pay equity in their workplaces. *Beijing Platform*, Para. 178(a), (h), (l), (o); *Beijing +5 Resolution*, Para. 82(h)

## **Scope of Pay Equity Obligations**

Pay equity must be achieved in both the public sector and the private sector. *CEDAW*, Articles 2(d), (e); *Beijing Platform*, Para. 178(a), (h), (l), (o)

Special measures are required to ensure that public authorities and public institutions act in compliance with pay equity obligations. *CEDAW*, Article 2(d)

## **Methodologies for Achieving Pay Equity**

Pay equity laws should require specific gender inclusive or gender neutral methodologies for evaluating and comparing the different jobs that men and women do and for reformulating wage structures of female-dominated jobs. ILO *Convention No. 100*, Article 3; *Beijing Platform*, Para. 178(k), (o)

Unions must be afforded an active role in developing and enforcing pay equity. ILO *Convention No. 100*, Article 4; *Beijing Declaration*, Para. 20; *Beijing Platform*, Paras. 166(l), 178(h)

Protection for the most vulnerable workers must be ensured by providing reasonable opportunity for representatives/agents of non-unionized employees to participate in developing and enforcing pay equity. *Beijing Platform*, Para. 45

## **Enforcement of Pay Equity Rights**

Complaints regarding lack of pay equity must be enforceable before a competent and expert tribunal. *International Covenant on Civil and Political Rights (ICCPR)*, Article 3; *CEDAW*, Article 2(c)

Mechanisms to adjudicate systemic wage discrimination must be strengthened. *Beijing Platform*, Para. 178(l)

An effective remedy for systemic wage discrimination must be provided, and competent authorities must enforce pay equity remedies where granted. *ICCPR*, Article 3

Meaningful sanctions must be imposed for the failure to comply with pay equity obligations. *CEDAW*, Article 2(b)

A mechanism for external oversight and auditing of employers' compliance with pay equity should be provided. *ICESCR*, Articles 16, 17; *CEDAW*, Part V; *Beijing Platform for Action*, Para. 178©)

## **B. EMPLOYMENT EQUITY**

### **Basic Principles and Obligations**

The principle of employment equity must be guaranteed, requiring equality of opportunity and treatment in employment and occupation for all women, including those who are disadvantaged on the basis of race, colour, indigenous status, religion, disability, political opinion, national extraction or social origin. *ICESCR*, Articles 2, 7; *ICCPR*, Article 26; *CEDAW*, Article 11(1)(b); *International Convention on the Elimination of all Forms of Racial Discrimination (CERD)*, Articles 4, 5(e)(i); *Universal Declaration of Human Rights*, Articles 2, 7, 23; ILO *Discrimination (Employment and Occupation) Convention (No. 111)*

(ILO Convention No.111), Articles 1, 2, 3(b); ILO *Employment Policy Convention* (No. 122) (ILO Convention No. 122), Article 2(c); *Durban Programme of Action on Racism, Racial Discrimination, Xenophobia and Related Intolerance* (Durban Programme), Articles 48, 66; *Beijing +5 Resolution*, Paras. 74(b), 82(a), (e); *Declaration on the Rights of Disabled Persons*, Articles 6, 7; *Declaration on the Rights of Mentally Retarded Persons*, Articles 2,3; *Declaration on Race and Racial Prejudice*, Article 9; *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 8; *World Programme of Action Concerning Disabled Persons*, Paras. 116-118

The right to work must be guaranteed and protected from discrimination. *ICESCR*, Article 6; *CERD*, Article 5(e)(i); *CEDAW*, Article 11(1)(a)

Governments must enact employment equity legislation to ensure the right is guaranteed.

*CEDAW*, Articles 2(b), 2(f); ILO *Convention No. 111*, Article 3(b); ILO *Maternity Protection Convention (Revised)* (No. 183) (ILO Convention No. 183), Article 12

Employment equity is a fundamental labour standard. ILO *Declaration on Fundamental Principles and Rights at Work*, Preamble, Article 1(b); *Beijing Platform*, Para. 41

Achieving employment equity is a required action for achieving the full implementation of human rights. *Beijing Declaration*, Paras. 9, 21; *CERD*, Article 2; ILO *Convention No. 111*, Preamble; *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Preamble, Rules 7(1), 15(2)

In preventing employment discrimination, the multiple and intersecting forms of discrimination experienced by individuals must be taken into account. *Beijing Platform*, Para. 178(f), (j), (p); *Beijing +5 Resolution*, Para. 83(d); *Durban Programme*, Articles 49, 51, 104(c); *Draft Declaration on the Rights of Indigenous Peoples*, Article 18

Governments must signal that they have made a strong commitment to achieving employment equity, particularly through legislation, that they have dedicated themselves unreservedly to achieving employment equity, and that they have mobilized adequate resources. *ICESCR*, Article 2(1); *Beijing Platform*, Para. 5

### **Scope of Employment Equity Obligation**

Employment equity must be proactively achieved in both the public sector and the private sector. *CEDAW*, Article 2(d), (e); *Beijing Platform*, Paras. 165(b), (o), 178(b), (h); *Beijing +5 Resolution*, Para. 82(m); *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rules 5, 8; *Durban Programme*, Article 215

Employment equity must be achieved for part-time as well as full-time workers. ILO *Part-Time Work Convention* (No. 175) (ILO Convention No. 175), Article 4(c)

### **Methodologies for Achieving Employment Equity**

The principle of gender equality must be constitutionalized. *CEDAW*, Article 2

## **i. General**

Women's right to free choice of employment, the right to promotion, job security, equal benefits and conditions of service, and the right to receive vocational training and retaining must be ensured. *CEDAW*, Article 11(1)(c)

Women's right to social security and the right to paid leave in cases of retirement, unemployment, sickness, invalidity, old age, and other incapacity to work must be ensured. *CEDAW*, Article 11(1)(e)

Governments must coordinate with regional and international institutions and actors to ensure employment equity for women living in poverty. *Beijing +5 Resolution*, Para.101(d)

Government policies must include gender equality training and gender-awareness campaigns. *Beijing +5 Resolution*, Paras. 82(j), (k)

Homeworkers' protection against discrimination in employment and occupation must be ensured. *ILO Home Work Convention (No. 177)* (*ILO Convention No. 177*), Article 4(2)(b)

Unions must be afforded an active role in promoting employment equity. *ILO Convention No. 111*, Articles 1(b), 3(a); *Beijing Platform*, Paras. 178(d), 180(a); *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rules 6, 9; *World Programme of Action Concerning Disabled Persons*, Para. 131; *Durban Programme*, Article 215; *ILO Workers with Family Responsibilities Convention (No. 156)* (*ILO Convention No. 156*), Article 11; *ILO Convention No. 183*, Articles 4(4), 11; *ILO Convention No. 122*, Article 3

Occupational segregation should be eliminated through measures such as counselling, placement, and the diversification of occupational choices. Equal participation in highly-skilled jobs and senior management positions should be promoted. *Beijing Platform*, Para. 178(g)

Employment equity must be facilitated by increasing access to risk capital, credit schemes, microcredit, and facilitating microenterprises and small and medium-sized enterprises. *Beijing +5 Resolution*, Paras. 74(b), 82(g)

## **ii. Women and Families**

Working mothers must be free from discrimination. *ILO Convention No. 183*, Articles 6, 8, 9, 10; *ICESCR*, Article 10; *CEDAW*, Article 11(2)

Governments must promote programmes and policies that enable women and men to reconcile their work and family responsibilities. *Beijing +5 Resolution*, Paras. 82(b), (c), (d); *CEDAW*, Article 10; *ILO Convention No. 156*, Article 3(1)

Workers with family responsibilities must be able to integrate into the labour force, as well as re-enter it after absences due to family responsibilities. *ILO Convention No. 156*, Article 7

Family support services and flexible working arrangements should be provided by the employer. *Beijing Platform*, Para. 180(b)

### **iii. Women with Disabilities**

Governments must support personal assistance programmes and interpretation services to increase the level of participation of persons with disabilities in everyday life at work. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 4

Negative attitudes and prejudices concerning disabled workers must be overcome, by means of state-initiated campaigns. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 7(4)

Employment equity for disabled persons must be achieved in both rural and urban areas. *World Programme of Action Concerning Disabled Persons*, Para. 128

Employment equity for disabled persons should be achieved through various measures, including incentive-oriented quota schemes, designated employment, loans or grants for small businesses, contract compliance, and tax concessions. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 7(2); *World Programme of Action Concerning Disabled Persons*, Para. 129

Technical aids for persons with disabilities and access to them must be supported by governments to achieve employment equity. *World Programme of Action Concerning Disabled Persons*, Para. 129

### **iv. Indigenous Women**

Governments must ensure employment equity for indigenous peoples. *Durban Programme*, Article 16; *ILO Indigenous and Tribal Peoples in Independent Countries Convention (No. 169)* (ILO Convention No. 169), Article 20; *Draft Declaration on the Rights of Indigenous Peoples*, Articles 18, 22

Governments must enact and supervise legislation and other measures for employment equity for indigenous and tribal peoples. *ILO Convention No. 169*, Article 33; *Draft Declaration on the Rights of Indigenous Peoples*, Article 37

Social security and other occupational benefits must be ensured without discrimination for indigenous and tribal peoples. *ILO Convention No. 169*, Articles 20(1)(c), 24

Vocational training must be tailored to suit the special needs of indigenous and tribal peoples. *ILO Convention No. 169*, Article 21

Handicrafts, rural and community-based industries, and a subsistence economy and traditional activities shall be recognized as important factors in the maintenance of cultures and in economic self-reliance and development of indigenous and tribal peoples. *ILO Convention No. 169*, Article 23

### **v. Women Disadvantaged by Racism, Racial Discrimination, Xenophobia and Related Intolerance**

Methods for achieving employment equity for victims of racism, racial discrimination, xenophobia and related intolerance include civil rights enforcement and public education and communication within the workplace. *Durban Programme*, Article 104(a)

Enterprises organized and operated by women who are victims of racism, racial discrimination, xenophobia and related intolerance should be supported by promoting equal access to credit and training programmes. *Durban Programme*, Article 103

The public and the private sectors should improve the prospects of targeted groups, particularly those subject to multiple discrimination, facing the greatest obstacles in finding, keeping or regaining work. *Durban Programme*, Article 104(c)

Governments should promote and observe international instruments and norms on workers' rights to avoid the negative effects of discriminatory practices, racism and xenophobia in employment and occupation. *Durban Programme*, Article 106

Both the private and the public sector should foster the growth of businesses dedicated to improving economic and educational conditions in underserved and disadvantaged areas.

*Durban Programme*, Article 104(b)

### **Enforcement of Employment Equity Rights**

A national coordinating committee for employment equity should be permanent and based on legal and administrative regulation, composed of pluralistic forces, and guaranteed autonomy and resources. *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 17; *Durban Programme*, Articles 90, 91; *National Institutions for the Promotion and Protection of Human Rights (Paris Principles)*

Employment equity must be enforceable before a competent and expert tribunal, and the remedies must be effective and enforced when granted. *ICCPR*, Article 3; *CERD*, Article 6; *Durban Programme*, Articles 108, 165; *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 15(4); *CEDAW*, Article 2

Meaningful sanctions must be imposed for the failure to comply with employment equity obligations. *CEDAW*, Article 2(b); *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Rule 15(2)

Progress in employment equity must be reported annually. *ILO Convention No. 111* Article 3(f)

Legislation implementing employment equity must be reviewed and monitored. *Beijing Platform*, Para. 178(c); *Standard Rules on the Equalization of Opportunities for Persons with Disabilities*, Preamble, Part IV

## **C. OVERVIEW OF SOURCES**

### **International Human Rights Instruments**

*Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*:

<http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>

*ILO Declaration on Fundamental Principles and Rights at Work*:

<http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm>

*ILO Discrimination (Employment and Occupation) Convention (No. 111)*:

[http://www.unhchr.ch/html/menu3/b/d\\_ilo111.htm](http://www.unhchr.ch/html/menu3/b/d_ilo111.htm)

*ILO Equal Remuneration Convention (No. 100):*

[http://www.unhchr.ch/html/menu3/b/d\\_ilo100.htm](http://www.unhchr.ch/html/menu3/b/d_ilo100.htm)

*International Covenant on Economic, Social and Cultural Rights (ICESCR):*

[http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)

*International Covenant on Civil and Political Rights (ICCPR):*

[http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)

*International Convention on the Elimination of all Forms of Racial Discrimination (CERD):*

[http://www.unhchr.ch/html/menu3/b/d\\_icerd.htm](http://www.unhchr.ch/html/menu3/b/d_icerd.htm)

*Universal Declaration of Human Rights:*

<http://www.unhchr.ch/udhr/lang/eng.htm>

## **International Policy Instruments**

*Beijing Declaration and Platform for Action:*

<http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>

*Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action (“Beijing +5 Resolution”):*

<http://www.un.org/womenwatch/daw/followup/ress233e.pdf>

*Declaration on Race and Racial Prejudice:*

[http://www.unhchr.ch/html/menu3/b/d\\_prejud.htm](http://www.unhchr.ch/html/menu3/b/d_prejud.htm)

*Declaration on the Rights of Disabled Persons:*

<http://www.unhchr.ch/html/menu3/b/72.htm>

*Declaration on the Rights of Mentally Retarded Persons:*

[http://www.unhchr.ch/html/menu3/b/m\\_mental.htm](http://www.unhchr.ch/html/menu3/b/m_mental.htm)

*Draft Declaration on the Rights of Indigenous Peoples:*

[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.SUB.2.RES.1994.45.En?OpenDocument)

*Durban Declaration and Action Programme on Racism, Racial Discrimination, Xenophobia and Related Intolerance:*

<http://www.un.org/WCAR/durban.pdf>

*ILO Employment Policy Convention (No. 122):*

[http://www.unhchr.ch/html/menu3/b/k\\_ilo122.htm](http://www.unhchr.ch/html/menu3/b/k_ilo122.htm)

*ILO Home Work Convention (No. 177):*

[http://www.ilo.org/public/english/employment/skills/recomm/instr/c\\_177.htm](http://www.ilo.org/public/english/employment/skills/recomm/instr/c_177.htm)

*ILO Indigenous and Tribal Peoples in Independent Countries Convention (No. 169):*

<http://www.unhchr.ch/html/menu3/b/62.htm>

*ILO Maternity Protection Convention, (Revised) (No. 183):* <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C183>

*ILO Part-time Work Convention (No. 175):* <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C175>

*ILO Workers with Family Responsibilities Convention (No. 156):*

<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C156>

*National Institutions for the Promotion and Protection of Human Rights (“Paris Principles”):* <http://www1.umn.edu/humanrts/resolutions/48/134GA1993.html>

*Standard Rules on the Equalization of Opportunities for Persons with Disabilities:*

<http://www.un.org/documents/ga/res/48/a48r096.htm>

*World Programme of Action Concerning Disabled Persons:*

<http://www.un.org/esa/socdev/enable/diswpa00.htm>

## BIBLIOGRAPHY

- Armstrong, Pat. 2002. *Equal Pay for Work of Equal Value*. Expert report prepared for the Canadian Human Rights Commission.
- Armstrong, Pat. 2001. Affidavit in the Court case, *CUPE et al v. Attorney-General (Ont.) et al.*
- \_\_\_\_\_. 1996. *The Feminization of the Labour Force - Harmonizing Down in a Global Economy*, in Isabella Bakker, ed., *Rethinking Restructuring: Gender and Change in Canada*. Toronto: University of Toronto Press.
- \_\_\_\_\_, Mary Cornish and Elizabeth Millar, 2003, "Pay Equity: Complexity and Contradiction in Legal Rights and Social Processes", Chapter 7, *Changing Canada: Political Economy As Transformation*. Health in the Workplace". Montreal, McGill-Queen's University Press, 2003. Edited by Wallace Clement and Leah F. Vosko.
- \_\_\_\_\_, and Mary Cornish. 1997. *Restructuring Pay Equity for a Restructured Work Force: Canadian Perspectives* Oxford, UK: Blackwells.
- Armstrong, Pat and Hugh Armstrong. 1994. *The Double Ghetto*. Toronto: McClelland & Stewart.
- Betcherman, Gordon, Amy Luinstra, and Makoto Ogawa. 2002. *Labor Market Regulation: International Experience in Promoting Employment and Social Protection*. Washington, D.C.: The World Bank.
- Cornish, Mary. 2003. *Engendering Citizenship and Labor Market Regulation: International and Canadian Perspectives*. Paper presented to the World Bank 5<sup>th</sup> Gender and Law Conference, "Law, Institutions and Gender Equality", March 18th-19th, 2003.
- \_\_\_\_\_, 1996, "Employment and Pay Equity in Canada - Success Brings Both Attacks and New Initiatives", *Canada-United States Law Journal*, v. 22, 1996.
- \_\_\_\_\_, and Fay Faraday. 2003. *A Legislative Checklist for Substantive Pay Equality*. Ottawa: Pay Equity Review Task Force (Justice Canada).
- \_\_\_\_\_, Fay Faraday and Veena Verma. 2004. *Securing Gender Justice, The Challenges Facing International Labour Law*. Prepared for the Compendium of Papers arising from the Meeting the Challenges of Globalization Conference at University of Western Ontario, October, 2003.
- \_\_\_\_\_, Elizabeth Shilton and Fay Faraday, 2003 "Canada's International and Domestic Human Rights Obligations to Ensure Pay Equity - Obligations to Design an Effective, Enforceable and Proactive Federal Pay Equity Law" Research Paper prepared for the Federal Pay Equity Review Task Force, Justice Canada.
- Hochschild, Arlene. 2001. *Time Bind: When Work Becomes Home and Home Becomes Work*, New York, Metropolitan/Holt.
- International Confederation of Free Trade Unions (ICFTU) 2002. *Privatisation and its Impact on Labour, Background Paper*. London: IMF & World Bank.
- \_\_\_\_\_. 1999. *Social Policy, Good Governance, Core Labour Standards and Development*. Online: <<http://www.icftu.org>>.
- International Labour Office. 2004. *Global Employment Trends for Women 2004*.
- International Labour Organization. 2002. *Organization, Bargaining and Dialogue for Development in a Globalizing World. Paper prepared for the Working Party on Social Dimensions of Globalizations*. Online: <<http://www.ilo.org/public/english/standards/relm/gb/docs/gb279/pdf/sdg-2.pdf>>.
- \_\_\_\_\_. 2002. *Decent Work and the Informal Economy, Report VI*. Online: <<http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf>>.
- ILO Director-General. 2003. *Time for Equality at Work: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Conference 91st Session 2003, Report I(b), Geneva, International Labour Office.
- ILO World Commission on the Social Dimension of Globalization. 2004. *A Fair Globalization: Creating Opportunities For All*. Geneva: International Labour Organization.

- Jain, Harish C. 2002. *Employment Equity in Selected Countries: The Case of Racial and Ethnic Minorities*, in Carol Agocs, ed., *Workplace Equality: International Perspectives on Legislation, Policy and Practice*. The Hague, The Netherlands: Kluwer Law International.
- and C. S. Venkata Ratnam. 2002. *Gender Equality In India*. In *Workplace Equality: International Perspectives on Legislation, Policy and Practice*. Edited by Carol Agocs. The Hague, The Netherlands: Kluwer Law International.
- Lim, Lin Leam. 1996. *More and Better Jobs for Women: An Action Guide*. Geneva: International Labour Office.
- Lustig N. and D. McLeod. 1997. *Minimum Wages and Poverty in Developing Countries: Some Empirical Evidence*, in S. Edwards, ed., *Labor Markets in Latin America: Combining Social Protection with Market Flexibility*. Washington: Brookings Institution.
- Obando, A. 2003. *Women Facing Globalization: The Impact of Neo-Liberal Globalization on the Economic, Social and Cultural Rights of Women*. Issues, WHRnet online: Women's Human Rights Net <<http://www.whrnet.org/docs/issue-globalisation.html>>.
- New Zealand Pay and Employment Equity Task Force. 2004. *Report of the Taskforce on: Pay and Employment Equity in the Public Service and the Public Health and Public Education Sectors*. Online: <<http://www.ers.dol.govt.nz/about/TaskforceReport.pdf>>.
- Pay Equity Task Force. 2004. *Pay Equity: A New Approach to a Fundamental Right*. Pay Equity Task Force, Final Report. Ottawa: Pay Equity Task Force.
- Poole, Dr. Phebe-Jane. 1994. *The Employment Equity Advantage*. North York: CCH Canadian Ltd.
- Ruwanpura, K. 2004. *Quality of Women's Employment: A Focus on the South*. Decent Work Research Programme, International Institute for Labour Studies. Online: International Institute for Labour Studies <<http://www.ilo.org/public/english/bureau/inst/research/crbien.htm>>.
- United Nations. 2000. *The World's Women 2000: Trends and Statistics*. New York.
- United Nations Development Programme. 1995, 1996. *Human Development Report*. New York, Oxford University Press.
- United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. 2001. *Declaration and Platform for Action*.
- UNIFEM. 2002. *Progress of the World's Women: UNIFEM Biennial Report*, UN IFEMOR.
- Vosko, Leah, Nancy Zukewich and Cynthia Cranford. 2003. *Precariousness in the Canadian Labour Market: Towards Improved Indicators of Labour Market Insecurity*. Unpublished.
- World Bank. 2002 a. *Integrating Gender in the World Bank's Work - A Strategy for Action*.
- \_\_\_\_\_ 2002 b. *Social Protection Sector Strategy: From Safety Net to Springboard*.
- World Bank Gender and Development Group. 2002. *Gender Equality and the Millennium Development Goals*. Washington, World Bank.