WOMEN AT WORK

A SURVEY AND RECOMMENDATIONS ON ASPECTS OF SOUTH AFRICAN WOMEN'S POSITION IN THE WORKPLACE

NALEDI
NATIONAL LABOUR & ECONOMIC DEVELOPMENT INSTITUTE

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WHILE ALL NALEDI PUBLICATIONS ADOPT A PRO-LABOUR PERSPECTIVE, THEIR CONCLUSIONS DO NOT REPRESENT THE POLICIES OF COSATU.

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INTRODUCTION

The research report emanates from the NALEDI Women and Work research group. In 1994 COSATU's Congress called for the establishment of a research group at NALEDI to explore the position of women workers. After discussions between COSATU National Women's Sub-Committee and NALEDI, the Women and Work Project was conceived.

The project comprises of two research programmes: firstly, an examination of the problems experienced by women at the workplace, and, secondly, an examination of the position of women in the trade unions. This report is the first leg of that project. It is envisaged that the second leg (on women in trade unions), will be completed by the end of 1995.

This report is primarily aimed at synthesising existing literature and does not necessarily generate new information. The report identifies key problems experienced by women at the workplace and recommends policy options for unions, employers and the government. However, the report does not consider all problems experienced by women at the workplace. For example, key issues like education, training, health and safety are not dealt with here.

Chapter one looks at ***the location of women in the labour market***. Trends identified include the concentration of women in 'typical female' jobs and low-paid jobs, the small percentage of women in managerial positions, women's high unemployment rate and share of poverty. The reasons for these trends are complex and include a combination of women's responsibility for homework and childcare, stereo-type attitudes and insufficient education and training. Recommendations include education and training, protective legislation and organising of women into trade unions.

Chapter two examines ***wage equity***. The chapter firstly attempts to define the meaning and extent of 'equal pay for equal work' and 'equal pay for work of equal value'. Secondly, the present grading system is investigated to ascertain whether it contributes to wage inequality. Thirdly, the chapter assesses union responses to wage equity and specifically the link between this and COSATU's living wage campaign. Fourthly, an overview is given of the legislative dispensation in South Africa, including selected industrial court cases dealing with discrimination. Fifthly, we provide an outline of the legal position internationally with a view of drawing lessons for South Africa. Countries considered are Ontario, Australia, Finland and the USA. Finally, the chapter recommends specific sex discrimination legislation.

Chapter three investigates ***sexual harassment at the workplace***. It defines the meaning and extent of sexual harassment, and considers the responses of government, employers and the unions. COSATU's Sexual Harassment Code of Conduct and Procedure is analysed specifically. In conclusion, the chapter suggests the need for education and awareness programmes on sexual harassment.

Chapter four provides an ***overview of labour legislation concerning women***. We examine the Labour Relations Act, Interim Constitution, Basic Conditions of Employment Act and Unemployment Insurance Act. Recommendations include adequate representation of women in the courts and gender education for the judiciary.

CHAPTER 1
TRENDS IN WOMEN'S EMPLOYMENT

1.1 Introduction

The chapter covers the following issues:

- Employment
- Income
- Unemployment and income
- Managerial positions
- Recommendations

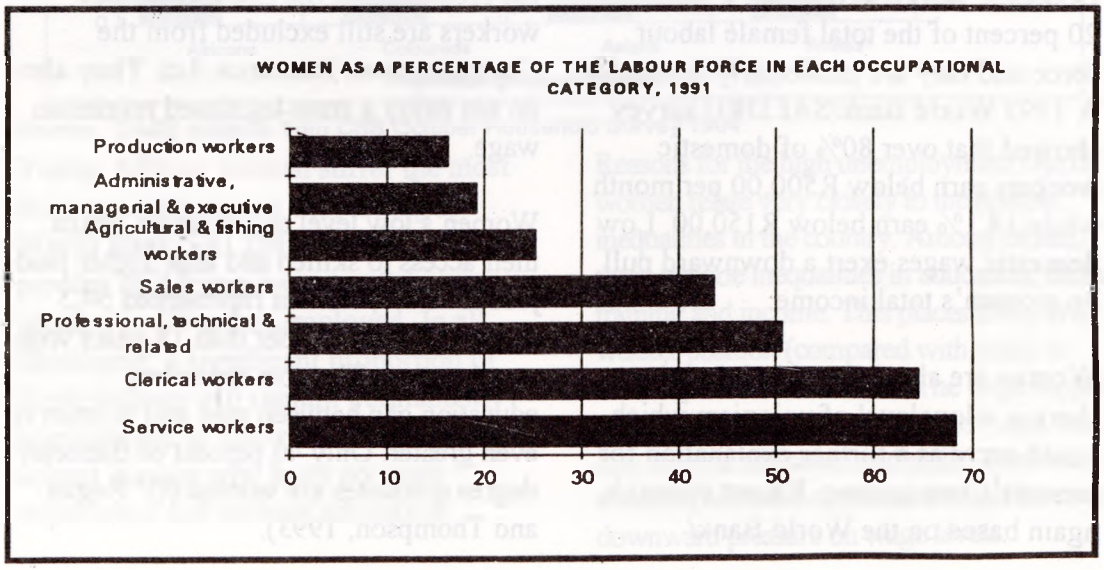
1.2 Employment

South African women's participation in the labour market has increased steadily since 1960. In 1991 women represented 36,3 percent of the formal labour force (O'Regan and Thompson, 1994). This increase coincides with the sectoral concentration of women in 'typical female' jobs. With approximately 8 million South Africans in formal employment this means about 2,88 million women have formal sector jobs.

These jobs are mainly in the service sector- e.g. catering, retail, domestic, clerical and secretarial work. This is the case in both the private and public sectors (de Bruyn, 1995 and Tshiki, 1995). And in those few manufacturing sectors where women predominate (such as clothing), the work performed is regarded as 'women's work'.

Graph 1 reflects the sexual division of labour in the workforce. It indicates that women are located primarily in service occupations while men are located in manufacturing occupations. For example, women hold 68,4 percent of jobs in service occupations (in turn domestic work constitute 19,5 percent of jobs in the service occupations) while men hold 83,7 percent of jobs in production occupations. Furthermore, 64,6 percent of clerical workers are women while 74,6 percent of agricultural and fishing workers are men. And even where women work in 'typical male industries' like manufacturing, they are concentrated in 'typical female occupations' like clerical and sales jobs.

GRAPH 1

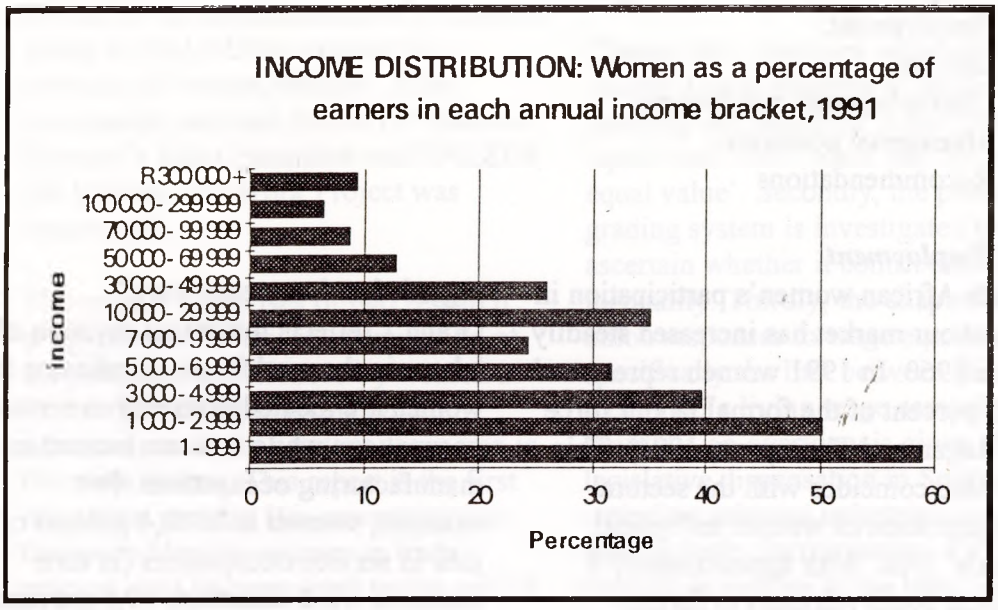


Source: O'Reagan and Thompson, ILO Equality for Women Project, 1993

1.3 Income

Women are concentrated in low-paid jobs. Graph 2 shows that women represent 59 percent of the R1,000 — R2,999 per annum income bracket and a mere 6.4 percent of the R100,000,00 — R299,999 income bracket.

GRAPH 2



Source: O'Regan and Thompson, ILO Equality for women project, 1993

Reasons for women's low income include their concentration in jobs that are flexible and low-paid. Flexible jobs include casual work, part-time work, sub-contracted work, seasonal work and home-based work. Women are also concentrated in the informal sector and small businesses which are characterised by low wages and bad working conditions (Nyman-Ray, 1995). Domestic workers comprise a staggering 20 percent of the total female labour force and they are particularly low-paid. A 1993 World Bank/SALDRU survey showed that over 80% of domestic workers earn below R500,00 per month while 18.1% earn below R150,00. Low domestic wages exert a downward pull on women's total income.

Women are also located in jobs where there is a low level of unionism which could serve as a further explanation for women's low income. Recent research, again based on the World Bank/ SALDRU survey shows higher wage levels for organised workers.

Also, flexible labour is inadequately protected in legislation. Domestic workers and farm workers were only covered by labour law as late as last year, while the Basic Conditions of Employment Act was only extended to them in 1993. Homeworkers do not enjoy the protection of the LRA. Domestic workers are still excluded from the Unemployment Insurance Act. They also do not enjoy a state-legislated minimum wage.

Women's low level of education, limits their access to skilled and thus higher paid jobs. In 1991, women represented 54,5 percent of people older than 18 years with no education. The post-secondary education gap between men and women is even greater. Only 40 percent of Bachelor degree graduates are women (O' Regan and Thompson, 1993).

While the low level of formal education and training qualifications contribute toward the limited employment opportunities of women, this is clearly not the only explanation. A further factor, is women's responsibility for unpaid work; producing and maintaining children, housework and caring for the sick and aged. This limits their opportunities for participation in the formal labour force (Todes and Posel, 1994). The lack of adequate facilities for childcare and for the sick and aged increases the burden of women.

Women's responsibility for unpaid work is often used by employers to justify discrimination at the workplace. The perception that women's income is supplementary to that of her husband or partner (who is normally regarded as the main breadwinner) reinforces this discrimination. In fact in 19% of households women are the primary or sole breadwinner (World Bank/Saldru Survey, 1994:24).

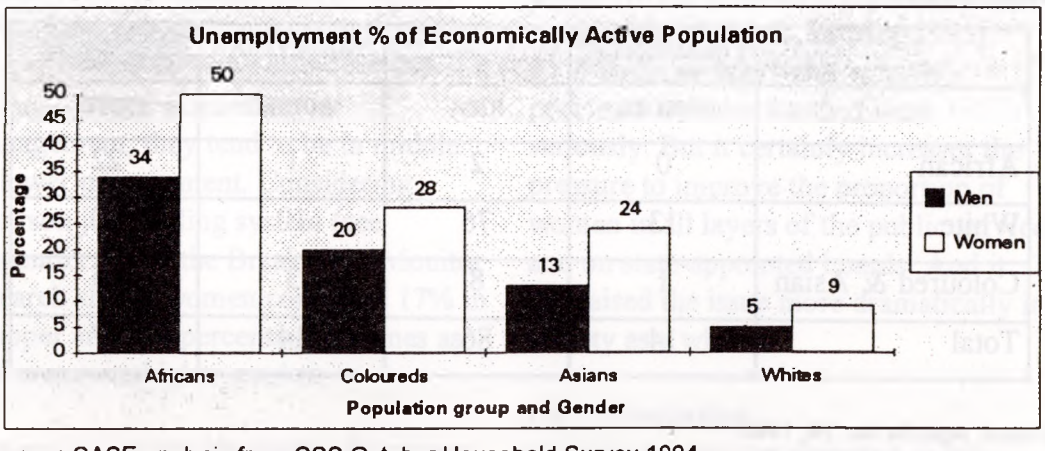
1.4 Unemployment

The official definition of unemployment is those persons who are not working and who are actively looking for a job. This definition is restrictive as it excludes discouraged workseekers — the long term unemployed who have given up looking for a job.

Applying an expanded definition of unemployment (including discouraged workseekers) the Central Statistics Survey (CSS) 1994 October Household Survey reveals that the total unemployment figure is 4,7million. Women account for 2.3 million (55 percent) of the total unemployed.

As Graph 3 indicates, African women make up a disproportionate share of the unemployed as 50 percent of African women are unemployed compared to 9 percent of white women. White men represent the lowest share with only a 5 percent unemployment rate.

GRAPH 3



Source : CASE analysis from CSS October Household Survey 1994

Young African women suffer the most from unemployment. According to World Bank/SALDRU survey, 71.2 percent of African women of the age group 16 - 24 are unemployed. In all likelihood, a significant proportion of these women will remain permanently unemployed as many of them represent school leavers who have no work experience and tertiary education.

Reasons for the high unemployment rate of women relate very closely to the present inequalities in the country. Among others, these include inequalities in education, skills, training and income. This places them in a weaker position (compared with men) in entering the labour market. The large supply of women workseekers combined with their low level of education and skills, decrease their employment opportunities and exerts a downward pressure on wage levels.

1.5 Managerial positions

Domestically and internationally women workers continue to be discriminated against in areas such as pay, promotions and recruitment. Even those women fortunate enough to be in the formal sector are in low level positions such as clerical, service, sales and middle and junior level posts. This can be attributed to apartheid laws and sex discrimination. High positions are regarded as men's terrain.

The legacy of apartheid means that women of different race groups are situated differently in the occupational division of labour. In general, white women have better positions than Indian and coloured women, who in turn have better positions than African women. However, compared with men in their respective race groups, women are generally employed in lower positions.

Recently, there has been a slight increase in numbers of women occupying management positions. Where women are in those posts, they are most likely to occupy middle rather than top management.

Even when women are in the same management positions as men there are disparities in their salaries and other benefits. However a 1995 survey done by P-E Corporate Services has shown the narrowing of the gap between males and females in the last few years. (P-E Corporate Services, 1995).

There are very few women, especially black women, in managerial and supervisory positions. In 1990, as Table 1 shows, less than 0,5 percent of managers were African women.

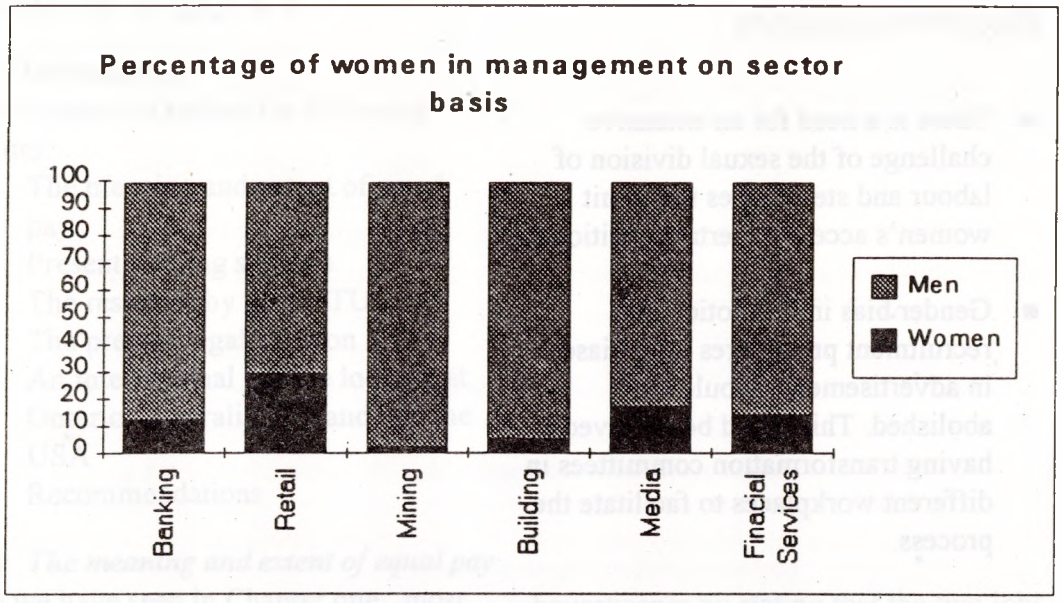
TABLE 1 - MANAGERIAL & SUPERVISORY PERCENTAGE BY RACE AND SEX (1990)

	Managers		Supervisors	
	women	men	women	men
African	0	2	1	22
White	13	76	10	50
Coloured & Asian	1	8	3	15
Total	14	86	14	87

Source: Agenda No. 24, 1995

Through the implementation of affirmative action, there has been some change in the number of women occupying management posts. A recent survey conducted by University of Cape Town's Breakwater Monitor project shows that women constitute about 11 percent of employees in management from the 16 sectors that were studied as compared to 89% of men. The highest proportion is in the retail sector (29%), and the lowest proportion in mining (2%).[1] Graph 4 summarises some of these findings. It should be noted, however, that the survey covers larger, more socially-responsible companies and probably reflects a more advanced picture than is the case in the economy as a whole.

GRAPH 4



Source: UCT Breakwater Monitor Report - March 1995

The percentage for women in general is low as compared to that of men. But white women are more likely to be in management position than black women (African, coloured, Asians). In the lowest level of management (C upper) 80% of the female incumbents are white.

In cases where women are in management, they tend to be in middle or lower management. Considering Paterson job grading system (see Appendix A), in the Breakwater Monitor research shows women constitute 17% in C upper and this percentage declines as one measures higher grades.

The public service recognises four posts as senior management; Director-General, Deputy Director-General, Chief Director and Director. By the end of 1994, there were no women directors and less than five chief directors. In 1995, there has been some change but at last count there were still less than four women Directors (Seidman-Makgetla, 1995).

The April 1994 elections brought a dramatic increase in the number of women parliamentarians. There are 117 women parliamentarians, three of whom are in the cabinet. This has catapulted South Africa to seventh position in the world (Weekly Mail, 11 May,1995). This does not imply that women's problems are now handled very seriously. But it certainly increases the pressure to improve the proportion of women in all layers of the public service and on state-appointed boards. And it has raised the issue more dramatically in society as a whole.

1.6 Conclusion

In short, women are clustered in jobs that can be defined as 'typical female' jobs, especially in services. Women are represented disproportionally in low-income brackets. And their concentration in flexible and unskilled jobs and small businesses contributes to their low incomes. A small percentage of women form part of corporate management. Finally, women represent a major percentage of the unemployed.

Recommendations

- There is a need for an extensive challenge of the sexual division of labour and stereotypes that limit women's access to certain positions.
- Gender bias in promotion and recruitment procedures (e.g. biases in advertisement) should be abolished. This could be achieved by having transformation committees in different workplaces to facilitate the process.
- Policies should be implemented to improve the position of women in existing low-paid jobs, for example minimum wage legislation.
- Employers should implement affirmative action programmes to redress the sexual division of labour by employing females in 'typical male' jobs.
- Education and training programmes should target women.
- Job-creation schemes should prioritise the employment of women.
- The state and the employers should assist with the implementation of childcare facilities to facilitate the full participation of women in the workforce.
- Trade unions should prioritise the organisation of women.

CHAPTER 2
WAGE EQUITY

1.1 Introduction

The chapter examines the following issues:

- The meaning and extent of equal pay
- Present grading systems
- The response by COSATU
- The present legal position
- An international outline looking at Ontario, Australia, Finland and the USA
- Recommendations

2.2 The meaning and extent of equal pay

As we have seen in Chapter one, most women workers earn lower wages than men. The primary reason is that women predominate in low-paid sectors and occupations. However, in many cases a woman is paid a lower wage than a man even though she is doing the same job. An example is where a female till packer earns a lower wage than a male till packer. If the reason for the wage difference is merely because of gender, then clearly we have a case of sex discrimination. This results in workers raising the demand of ***equal pay for equal work***. Cases of equal pay for equal work are uncomplicated where the jobs are exactly the same. Where the jobs are comparable but not exactly the same, the question of equal pay becomes complex. If the jobs have the same value, then we have a case of ***equal pay for work of equal value***.

A case in point is where a female housekeeping assistant earns less than a male cleaner. The key questions are whether these two jobs are comparable and whether there are reasons other than sex to justify the pay difference. In this case, the Supreme Court in the Netherlands[2] upheld the claim of the housekeeper by stating that the two jobs are of equal value and therefore the female housekeeper should be paid the same wages as the male cleaner.

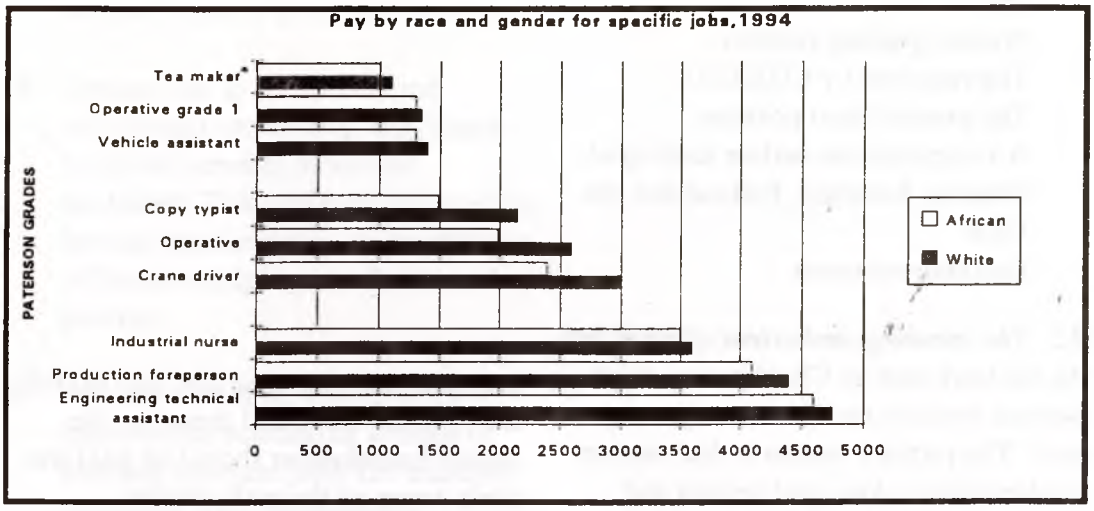
Although unequal pay for the same work constitutes an unfair labour practice, there are cases of such inequality. A 1985 study at a knitting factory found that men were earning higher wages than females despite doing the same jobs (Barret et al, 1985).

A difficulty in assessing how widespread this practice is the lack of information in respect of wage differentials. Government statistics report macro-data and therefore do not uncover specific cases of gender differentials. In 1993, research revealed a substantial wage gap between men and women in the same job grades (Budlender and Seidman-Makgetla, 1995). More recent evidence suggests that gender differentials are diminishing but that an A grade woman worker must, on average, still expect to earn only 93% of her male equivalent and a B grade worker 94% (P-E Corporate Services, 1995).
In many cases, wage differentials are hidden in formal grading systems.

Graph 5 gives a breakdown of comparable male and female jobs in the Peromnes grades. It demonstrates that males located in typical male jobs, earn more than females located in typical female jobs, although they are on the same grades.

For example, a tea maker earns less than a vehicle assistant. While the graph also reveals wage differentials between white and African workers, the gender picture is clear.

GRAPH 5



Source: Budlender and Seidman Makgetla Equal pay for equal work: Issues and options, 1995

2.3 Present grading systems

The determining issue for comparing the jobs of male workers with that of female workers is the grading system. In other words, what job evaluation criteria do employers use to decide how to grade particular jobs?

In South Africa there are various grading systems. Two of the most common are the Paterson system and the Peromnes system.

The Paterson system is based on one key factor: decision-making. Jobs are divided into 6 grades primarily according to the level of decision-making. These grades, with the accompanying level of decisionmaking are:

- Top management - policy-making decision
- Senior management- programming decisions
- Middle management- interpretive decisions
- Skilled workers- routine decisions
- Semi-skilled workers- automatic decisions
- Unskilled workers- defined decisions

Each grade in turn has sub-grades. Factors used to determine these sub-grades are:

- Does the worker supervise other workers?
- How many different tasks does a worker do in her/his job?
- How detailed is the job?
- How much pressure is there?
- How much training and experience does the worker need? (WIG, 1988)

Peromnes is different from Paterson only in that it has more factors. A common criticism of both systems is that the key factor (decision-making) favours management rather than workers. Factors generally not taken into account include heavy work, dangerous work, bad working conditions and stress. A further criticism is that the present grading systems are task based (measuring the work that workers do) and not skills or competency based (characteristics necessary for the worker to do the job).

Society generally treats decision-making and authority as a male domain. Even where women make a majority of the workforce, supervisory staff are commonly male. Further, task-based grading systems are discriminatory against women. For example, women normally do not receive formal training at work for cooking and cleaning. Employers assume women can do the work by disregarding the life-time training they receive at home. The net result is that some relatively skilled jobs are undervalued and undergraded.

No wonder, in the public sector for example, women constitute the majority of lower grade workers with the lowest pay — women represent 54% cleaners, 62% food services aid and 65% linen stores aids (de Bruyn, 1995). These occupations are characterised by no career pathing and no training requirements.

2.4 Response by COSATU

Historically, the struggle for a living wage (incorporating a minimum wage) has been central to the existence of COSATU (Young, 1990), and in 1988 COSATU included the demand for equal wages in its living wage campaign (COSATU, 1988).[3]

At the first COSATU Women's Conference in 1988, the following demands were adopted for inclusion in the Living Wage Campaign:

- Sex discrimination should be abolished in all factories
- Women workers should have full job security
- Service should be unbroken when a worker takes maternity leave
- Women workers should have the same opportunities as men for training and promotion
- Unions should be specially concerned about the problems of farmworkers and domestic workers
- People must recognise the struggles of women in their campaigns for public holidays (COSATU, 1988).

On the shopfloor, both male and female workers engaged in struggle in support of the demand for equal wages. In 1986 Chemical Workers Industrial Union (CWIU) embarked on a three-week strike in support of the demand for equal wages. As a result of this struggle, women obtained a 54 percent wage increase (COSATU, 1988). At another company CWIU women workers fell outside of the grading system and as a result, were paid very low wages. After negotiations women won an increase of 135 percent.

Although the struggle for a living wage did result in a general increase in wages for women, there were various weaknesses. First, these struggles were limited to women in unionised companies. This meant that unorganised women did not benefit from these struggles. Second, while these struggles did improve the wages of women, they were limited to cases of equal wages for equal work.

COSATU has challenged present grading systems by linking its wage demands to job grades. COSATU is proposing a grading system that is based on the recognition of prior learning and skills acquired through experience (Bird and Lloyd, 1988). Demands in respect of skills grading include the following:

- Recognition of skills which workers exercise but for which they are not paid.
- Establishing formal career paths based on skills measured by nationally agreed competencies and thereby removing other discriminatory criteria for promotions and advancement.
- Establishing fairer criteria for grading by which employers reward their workforce and reduce industrial tension which arises from perceived unfairness in existing grading systems.
- Providing financial incentives to workers to participate in learning by linking higher skills to higher wages.
- Linking the union wage bargaining strategy to training and human resources policy.
- Narrowing the wage gap created by apartheid wage policies by linking each level in the skills grading system to a fixed wage relativity of a skilled worker.

While these demands will address women's location in low-paid jobs, they fail to target grading criteria that are discriminatory against women. As a result, present wage negotiations do not challenge the gender bias inherent in the grading systems.

2.5 The legal position

South Africa does not have specific legislation concerning wage equality. Neither does existing legislation explicitly make provision for wage equality. Instead, this is encompassed indirectly in the Labour Relations Act and the Interim Constitution.

The Labour Relations Act

In terms of the LRA, the payment of different wages for the same job constitutes an unfair labour practice. This is defined as any act or omission which has or may have the effect that:

"any employee or class of employees is or may be unfairly affected or that his or their employment opportunities or work security is or may be prejudiced or jeopardized thereby".[4]

A woman will thus be 'unfairly affected' if an employer pays a higher wage to her fellow male worker even though they do the same job. Her 'employment opportunities' will be affected by the payment of a lower wage. For example, she will be less qualified for promotion opportunities than her male counterpart as she will be in a lower salary bracket.

Despite the fact that the unfair labour practice definition is wide enough to encompass wage discrimination, the Industrial Court has not heard many such claims. Instead, the majority of cases brought to the Industrial Court concern unfair dismissals, retrenchments and strikes. In *South African Chemical Workers Union v Sentrachem*[5] the Industrial Court had to decide whether wage differentials between black and white workers constituted an unfair labour practice. In supporting the claim of the union, the court held that wage differentiation based on race or any other difference [eg. sex] between employees other than skill or experience, constituted an unfair labour practice. In support of its judgment, the court argued that the LRA was based on the central themes of 'non-discrimination, equality and equitable and modern employment

practices'. While this case involves race discrimination, it is wide enough to be equally applicable to a wage discrimination claim based on sex.

However, it is unlikely that the court will stretch the interpretation of the unfair labour practice definition far enough to include equal pay for work of equal value within its scope. This points towards the need for special legislation on wage equity. A concern is that the union movement has not used the legal process as one of the sites of struggle to attain wage equity. This is largely as a result of the fact that the 1990s have not been characterised by shopfloor struggles around wage discrimination as was the case in the 1980s.

Explanations for COSATU's failure to challenge sex-based wage discrimination include the absence of women from leadership positions in the union, the fact that only a small percentage of full-time union negotiators and organisers are women, the high percentage of unorganised women compared with that of men and the lack of confidence on the part of female union members to put forward grievances based on gender.

The new labour law, scheduled to come into effect during 1996 does not specifically outlaw sex discrimination but it does entrench the constitutional right of employees to fair labour practices. The concept of fair labour practices is not different from the unfair labour practice definition in the existing LRA. However the new LRA does extend the fair labour practice to persons seeking employment. This means that a woman seeking employment is entitled to be employed at the same wage as her male counterpart.

An innovation of the new LRA is the establishment of workplace forums at workplaces which have more than 100 employees. While the new LRA does not list issues pertaining to women specifically, like childcare, as issues for consultation, these forums will have the right to consult with employers about job grading and education and training. Workers will therefore have the opportunity to evaluate their wage structures and to propose gender sensitive job grading schemes.

The Interim Constitution

The Interim Constitution contains a Bill of Rights, including an equality clause which states that 'every person shall have the right to equality before the law and to equal protection of the law'. Further, the anti-discrimination clause prohibits unfair discrimination (directly or indirectly) on the basis of 'race, gender, sex...'.

As is the case with the LRA, it is doubtful whether both provisions will be applicable to cases of equal pay for work of equal value. In line with USA case law, the Constitutional Court would in all likelihood interpret equality to mean jobs that are compared are substantially equal. This means that the court might compare the job of a waitress with that of a wine steward but not the job of a nurse with that of a welder.

The Interim Constitution has many limitations. One is that (although the Constitutional Court still has to decide on this issue), the Constitution currently only operates between the organs of the state and private individuals. This means that private individuals or companies cannot institute claims against each other in terms of the Constitution. An example is that a trade union cannot bring a claim against a private employer in that s/he breached the equality clause. Nevertheless, a trade union can bring such a claim against a public employer.

2.6 International outline

Some industrialised countries have specialised equal pay legislation, (eg. Canada, France, Japan, Netherlands, Spain and the United Kingdom) while other countries make provision for equal pay within general equality legislation, (eg. Australia and Finland). The primary advantage of specific equal pay legislation is that specialised tribunals can be created to develop special policies on equal pay. As we have seen, South Africa does not have specific equal pay legislation. This section will provide an overview of the legislative dispensations in Ontario, Australia, Finland and the USA. Each of these countries have different approaches to combating wage discrimination. A suggested legislative model for South Africa comprises a combination of the legislative models of Ontario and Australia.

Ontario[6]

An innovative legislative model is Ontario's Pay Equity Act of 1988. This model is proactive and does not rely on a complaint to be made by a dissatisfied worker. The Act places the responsibility on both public and private sector employers to correct gender discrimination in wages by the introduction of pay equity schemes. A pay equity scheme means that an employer evaluates all female and male job classes in his/her establishment. The Act defines 'female job classes' as those that have 60% or more women and 'male job classes' as those with 70% or more males (McDermott P., 1991).

The employer then compares the female jobs with that of the male jobs by using the same evaluation criteria to ensure that women are not paid less than men. These evaluation criteria involve skill, effort, responsibility and working conditions. If there is a union present, the entire pay equity process is negotiated between the union and the employer. In the absence of a union, employers have to develop their own pay equity plan. A dissatisfied worker is entitled to challenge the wage equity scheme by lodging a complaint with a specialist wage equity tribunal (Eyraud, 1993).

There are two stages in the evaluation process. The first stage is where the employer has to ascertain whether the female job class has the same value as that of the male job class, using the evaluation criteria. Once this is established, the second stage becomes operative. If there is a difference between the job classes that are compared, the employer has to make a readjustment. Such readjustment can be negotiated between the employer and the union.

The interesting aspect of the Act is that it makes provision for trade union and non-trade union members. Unlike equal pay legislation where the responsibility is placed on the complainant to point out wage discrimination, pay equity schemes place this responsibility on employers. If employers fail to do so, the legislation requires them to remedy the situation within a set period.

A criticism of this model is that it is dependent on a comparable job class. This means that an employer must have female job classes that can be compared with that of male job classes at the establishment. In the case of establishments where there are only female jobs like some childcare centres and nursing homes, Ontario's pay equity schemes would not apply (Eyraud, 1993).

Australia

Australia traditionally has had a high degree of wage determination at a centralised level and the focus of the struggle for wage equity is the national wage setting mechanisms. Wage setting takes place at industrial tribunals which set minimum wages. These minimum wages can be improved through collective bargaining. Wage setting takes the form of conciliation and compulsory arbitration.

Australia does not have special pay equity legislation. Instead, existing labour legislation provides for wage equity measures. The trade unions have been central in fighting for change in respect of wage equity. ACTU, the only Australian union federation, in fact adopted an active programme for women workers with wage equity forming part of this programme. It has especially been active in bringing cases to the Commission and it has run many test cases before the tribunal.

A key reason for the involvement of ACTU in wage equity cases is its high level of unionisation of women workers. 31.1% of women workers are unionised while 37.9% of male workers are unionised (ACTU Congress Report, 1995).

The Australian wage setting model has been especially beneficial to women who predominate in low-paid jobs. Minimum wage fixing at a centralised level has resulted in reducing wage differentials between higher paid and lower paid workers. Australia therefore has a more equitable and egalitarian system of wage distribution.

Finland

Wage equity is dealt with by the Equality Act. The Equality Act[7] prohibits discrimination on the basis of sex. A specialised Equality Ombudsman is charged with supervising the implementation of the Act. Such supervision is more of an administrative nature as opposed to judicial. The Ombudsman is entitled to carry out inspections at workplaces and to obtain information from both private and public sector employers.

Where a breach of the Act occurs, the Ombudsman has an obligation to counsel and advise the wrongdoer and to bring the breach to the attention of the Equality Board. The Equality Board in turn is empowered to impose a penalty or fine on the employer. Appeal cases are heard by the civil courts. Wage equity cases can also be heard by the labour courts. Individuals are entitled to bring these cases with the assistance of the Ombudsman.

Although the Ombudsman gives advice on wage equity matters, s/he also has to deal with other employment discrimination issues that fall within the scope of the Act. This is a weakness in the Act as already the Ombudsman has limited resources which has an impact on it prioritising wage equity matters. Legislated pay equity has not had a major effect on wage differentials: on average women's wages are 75% of those of men.

United States of America

In the United States of America equal pay is covered by both Title VII of the Civil Rights Act, 1964 and the Equal Pay Act, 1981. Title VII is a broad anti-discrimination statute which prohibits discrimination on the part of employers on various grounds including sex and race. Not many equal pay cases are brought in terms of Title VII as the Supreme Court had decided that a grievant has to prove that the employer had discriminated intentionally.

This means that an indirect pay discrimination claim cannot be in terms of Title VII.

An independent agency, the Equal Employment Opportunity Commission (EEOC) administers both Title VII and the Equal Pay Act. Functions of the EEOC include advising a prospective complainant and to investigate whether s/he has a claim. In terms of Title VII claims, the EEOC has to determine whether the complaint can be conciliated and settled between the parties. The Commission is entitled to bring a claim on behalf of a complainant.

Although the Equal Pay Act does not specifically cover equal pay for work of equal value, in practice the courts interpreted equal pay to mean 'substantially equal' rather than identical (Weiler, 1986). A fundamental problem on the part of judges was how to evaluate jobs, i.e. what objective criteria should be applied to evaluate a job. In ascertaining evaluation criteria, one argument is that every job has an intrinsic value which is determined by a price set by the labour market (Weiler, 1986:1758). The existence of wage discrimination means that there are subjective factors involved in determining evaluation criteria.

Therefore, although employers use labour market criteria to classify, pay and value jobs, these criteria leave a wide scope for subjective value judgments. Public policy concerning the value of a job plays a large influential role, for example, discriminatory attitudes concerning the value of 'typical female jobs' no doubt is a determining factor in the payment of low wages.

Lessons for South Africa

Legislative intervention should be seen as an important stepping stone towards the removal of sex discrimination and South Africa should move in a similar direction. It is suggested that South Africa implements a legislative model that is a combination of the models in Ontario and Australia. Both systems are characterised by a high degree of trade union involvement. This trend fits in with the conceptual framework of the new labour law which calls for democratisation of the workplace.

A significant advantage of Ontario's Wage Equity Act is that it does not rely on voluntarism on the part of employers. The high degree of state intervention makes the system largely compulsory. Such a pro-active approach is especially necessary in South Africa with our history of discrimination. Australia's emphasis on minimum wage setting is particularly important in respect of black women who are placed in the lowest paid jobs. A combined approach will therefore address both wage disparities between men and women and increase the existing low wages of women.

A lesson from international experience is the impact of legislative intervention should not be overestimated. Pay equity legislation has to be combined with other socio-economic intervention like the implementation of childcare facilities, the removal of the sexual division of labour and pressure from organised interest groups. Research has revealed that sex discrimination legislation has failed to bring about any significant change in women's employment positions (Weiler, 1986:1766). In countries where pay equity legislation has been enacted, women still experience the same old problems of being placed in low-paid and low-valued jobs.

Pay equity plans still remain within the constraints of low wages for unskilled jobs for all workers. The comparative paradigm means that women's work is compared with that of men's jobs. Pay equity schemes do not challenge the fact of low pay itself. While the union can flex its economic muscle to wring higher wages from an unwilling capitalist, such wage settlements are still tied to the market .

A case in point is the experience of women in the former German Democratic Republic ('GDR'). The GDR promulgated the earliest legislation on equal pay with Decree of the Soviet Military Administration in 1946 and the 1949 Constitution. Although in 1981 91% of women of working age were employed, women earned on average between 12-25% less than men. The reason for this gap was the concentration of women in jobs requiring lower levels of education and responsibility (Einhorn, 1991:1). Related to this reason was the occupational segregation of women in traditionally female-dominated sectors along similar lines as South Africa (Einhorn, 1991:2).[8]

While the placement of women in 'typical female' jobs is one of the primary causes for low wages, research has also revealed an intractable link between low wages and the institution of marriage (Weiler, 1986:1785). Studies undertaken in the USA disclose that married women (employed on a full-time basis) with a working spouse earn 40% less than married men. Also participation in the workforce is the highest for married men and the lowest for married women (Weiler, 1986:1786) Factors contributing to low wages for women include the interruptions caused during their child bearing years, responsibility for homework and the organization of the workplace which does not allow parents to combine employment with childrearing (Weiler, 1986:1787). No doubt, these factors also apply to unmarried women with children.

The primary issue is that the fundamental cause for low wages paid to women is the division of labour in society which assigns the job of reproduction to the woman in the private family and employment to the man in the labour market. Job evaluation schemes cannot deal with this issue.

Pre-entry discrimination

Discrimination against women before they enter the workforce (pre-entry discrimination) contributes towards their concentration in low-paid jobs. Recruitment practices encourage men to apply for 'typical male' jobs. For example, a woman will not apply for the job of a bus driver. Even if she was to apply, it is unlikely that the employer will employ her as this job is heavily dominated by males. Men's concentration in managerial positions means that they are in control of the pre-employment process - advertising, recruitment and selection.

Men are advantaged in selection practices as they have longer work records and thus more work experience. As stated above, men's higher educational qualifications place them in a better position to obtain a job. Women's childcare responsibilities constrain them to more flexible and less demanding jobs, for example shorter working hours and jobs with less responsibility. Pre-entry discrimination can be addressed by employers encouraging women to apply for 'typical male' jobs and by providing on-the-job-training.

Recommendations

- It is vital for the labour movement to link the demands of equal wages for equal work and equal wages for work of equal value to the living wage campaign. This will ensure that the working class as a whole takes up the struggle against the oppression and exploitation of women, ensuring that this is not regarded as a 'women's issue but a problem of every worker. This approach will serve as a political imperative to eradicate wage discrimination as a form of sex discrimination.

- Present grading systems need to be reevaluated through collective bargaining to ensure that jobs are not undervalued because they are done by women.

- There is a need to popularise wage equality demands similar to Britain and the USA where 'equal wages for work of equal value' has become an organisational issue.
- Specific legislation on equal pay for equal work of equal value needs to be introduced. Ontario's legislative model, characterised by a high degree of union participation and enforcement measures, represents a fair model.

- The enslavement by women in housework and childcare constitute fundamental barriers to wage equality. The provision of childcare facilities is essential for the emancipation of women from the sexual division of labour.

- Present ideology plays a major role in restricting women to 'typical female' jobs' and the home. Education from pre-school to tertiary education is necessary to combat stereotyped sex roles.

CHAPTER 3
SEXUAL HARASSMENT

3.1 Introduction

This chapter looks at:

- Definition of sexual harassment
- Its extent and impact
- Approaches to dealing with harassment
- COSATU's code of conduct
- Recommendations

Sexual harassment poses a number of serious problems for the harasser, harassee and the environment where it occurs. Because of the nature of sexual harassment, there are no clear cut procedures for dealing with the matter and there is a problem of what really constitutes sexual harassment. As a result there are difficulties in coming up with measures to alleviate the problem.

3.2. Definition of the term

There are broader and narrow definitions of sexual harassment. In its narrow definition, it includes different forms of sexually oriented remarks and behaviour. The broad definition includes when a male worker (usually a boss) offers an opportunity in exchange for sexual favours.

COSATU' s code of conduct defines sexual harassment as any unwanted or unwelcome conduct of a sexual nature or other conduct based on sex that causes discomfort to the victim. This conduct can include unwelcome physical, verbal and non-verbal acts of a sexual nature, often with an underlying threat or coercion.

According to United States, European and South African literature sexual harassment comes in two forms. Favours-linked sexual harassment occurs when a term of employment is expressly or implicitly conditional on the individual's participation or acquiescence to another employee's demands for sexual favours. Hostile working environment sexual harassment exists when unwelcome sexual conduct interferes with an individual's job performance or creates an intimidating or hostile environment. This includes sexual slurs, insults, jokes, pictorial or other displays of a sexual nature.

Some definitions have been criticised for assuming that sexual harassment is an act done only by men against women. As Kierin O'Malley argues, defining sexual harassment as largely or exclusively a feminist or women's problem - i.e. one in which the culprit is a man, is an intellectually easy option, that will ultimately not produce a solution (O'Malley,1995). While such a definition can be seen as biased or misleading, the fact of the matter is that in general women especially are the victims of sexual harassment.

The broader definitions of sexual harassment stress that the action is "unwelcome" and "unwanted". When a person makes clear that the advances or remarks are unwelcome, harassment then begins. Therefore, harassment should not be confused with genuine attraction between people or flirtatious behaviour.

Sexual harassment is currently mainly a way of asserting male dominance over women. Therefore, it has ***little to do with sex, and everything to do with abuse power***. In addressing this issue, the imbalance of power and authority relations should not be divorced from the issue.

Sexual harassment causes serious problems for women at their workplaces, including absenteeism, job loss, merit increases, promotions, and both psychological and physical stress.

Sexual harassment results from racist and sexist practices and attitudes. For example, discriminatory practices that exist at work generally put men in positions of power which they may use for sexual maneuvering. Women are usually in subordinate positions, for example secretarial and domestic jobs, making them vulnerable and complaisant. People in lower positions and less secure positions, often women, are targets of harassment. In short, sexual harassment is one form of the abuse of power.

Moreover, sexual harassment is implicitly or explicitly condoned. Some people conceive this behaviour as something which has long been present in some cultures and accepted as a normal practice. This conception is prevalent especially among Africans who sometimes see sexual harassment as another attempt to impose Western standards. Research conducted by the University of Cape Town (UCT) in 1991 clearly shows this. Male African students stated that:
"the rules pertaining to sexual harassment have a serious impact on the lives of black students because what is termed sexual harassment at the campus is not an issue in the township." (EORP, 1991:27)

Certainly, not everyone subscribes to this. On the contrary sexual harassment can be conceived as having more to do with the culture of 'being a man' than with 'African' or 'township' culture. Sexual harassment is really about authority.

3.3 The extent and impact of sexual harassment

Unwanted sexual advances in the employment sphere are common. Local and international research shows that although sexual harassment also occurs in other spheres (e.g. university campuses and schools), 90% of all sexual harassment takes place at work (Labour Institute, 1994). United States evidence suggests that sexual harassment usually occurs where women are subordinates (ILO, 1993). In most but not all cases it involves a male supervisor and a female subordinate. One similar case is that of white foreman from S. A Dried Fruit Company in Benoni who repeatedly harassed a woman worker and ultimately raped her (Sunday Times, March 16 1995).

Statistics on the extent of sexual harassment in South Africa suggest that this behaviour is escalating. Surveys conducted in South Africa in 1992 found that more than 70% of women surveyed have experienced harassment (Business Day, May 17 1995). A recent case between two colleagues, Atze Herder and Sharon Sowter of Intertech company is one example.

Sowter, who was being harassed, left her job because of fear, since the harasser was re-employed after initial dismissal. The court decided that Herder (the harasser) be dismissed from the company, because the essential facts of harassment were undisputed.

The banking workers union SASBO has mentioned that "girls are reluctant to report their bosses for fear that management would close ranks against them." (Sasbo News, June 1995) A majority of junior employees in this sector are women. This fear results in higher labour turnover, absenteeism and dismissal. As a result of this, women tend to be the worst affected in terms of merit increases and promotions since they do not stay in their jobs for a longer period. In some instances they face problems of forced reassignment, or retaliation from other co-workers (both men and women). In COSATU's national women subcommittee workshop, many women reiterated the fact that victims of sexual harassment who report the matter get a negative response from their co-workers, by mentioning that the victim was not harassed at all, or she invited the act herself.

An ILO study has shown sexual harassment is potentially a severe occupational stress which can lead to psychological and physical problems as well as affecting job performance, health and attitude (ILO, 1993). Women are unable to break the silence on sexual harassment because it affects them emotionally.

Sexual harassment also affects companies in the sense that productivity decreases when the woman who is harassed develops a negative attitude towards work. It can also be costly for the affected companies, since they may lose valuable staff and need to employ new staff members.

3.4 Dealing with sexual harassment

Employers, unions and the government should play an important role in responding to sexual harassment. In general there has not been a positive response from some parties, although a move towards taking up the issue has begun. Sexual harassment is seen as a women's issue, not as something requiring the same treatment as other matters.

The South African government has been silent on the issue of sexual harassment for the past decades and there has been no legislation addressing the issue. South Africa's new interim constitution indirectly addresses sexual harassment by outlawing discrimination on the grounds of sex and giving everyone equality before the law and equal protection by the law. But there is no explicit law which gives 'job protection' to victims of sexual harassment.

Few companies have any policy on the issue. A recent survey conducted by the Institute of Personnel Management (IPM), showed that only 6,5% of companies had formal policies on sexual harassment (IPM et al, 1995). Even the existing policies are not uniform and each company designs its own policy. In general, they believe that the importance is to state the objective (the prevention of sexual harassment), leaving concrete measures to be taken at the level of the firm. Companies should be encouraged (or forced) to adopt policy and procedure on sexual harassment.

The procedure followed by many companies is a crucial issue. A clear policy stating the action is unacceptable in the work environment needs to be coupled with a procedure to guide the treatment of the issue. This, in turn, needs an effective dispute mechanism, where confidentiality trust and use of properly qualified personnel to deal with the complaints is essential.

Trade unions too are not yet fully at ease with the subject. Only recently have they begun to see the importance

of the matter through protest actions and campaigns against sexual harassment. Is there an increase in sexual harassment within unions? One case is reported in the book *No Turning Back*:

"One particular shopsteward would kiss me when he greeted me.
He was an oldish guy and it made me feel very uncomfortable...."
(Sached & Speak, 1992, p15)

Some consequences of sexual harassment within unions include a decrease in membership and divisions within the union. Sexual harassment reduces women participation in unions. Considering that there are few women in unions already, in COSATU as a whole the percentage of women leadership (i.e. national office bearers) by 1990 was only 13% (Naledi, 1994), sexual harassment makes the situation even worse.

3.5 COSATU's sexual harassment code of conduct

COSATU has recently adopted a code of conduct on sexual harassment.[9] The code provides a definition of the term, procedures on how to handle the issue and its implementation to COSATU affiliates. This is a code of conduct for the federation which applies to union members only and not to other non-COSATU unions.

The code provides formal and informal procedures. With the formal procedures a disciplinary committee is used. According to the code, the disciplinary committee must be gender balanced to avoid gender bias when dealing with the problem. The informal procedure includes direct contact with the harasser or an intervention by another person. This is quite a positive move from the side of COSATU but must be implemented and followed up to facilitate the smooth working of the code. ■

Recommendations

■ Policies and guidelines on sexual harassment should be developed by companies, unions and employers.

■ Deal with the misuse of cultural values as a way of justifying sexual harassment. It should be made clear that sexual harassment is not acceptable behaviour in any culture.

■ Eduation and awareness programs on sexual harassment must be done for both employers and employees and also union members and officials.

CHAPTER 4

WOMEN AND LEGISLATION

4.1 Introduction

This section covers:

- The Labour Relations Act
- The interim Constitution
- The Unemployment Insurance Act
- The Basic Conditions of Employment Act

4.2 The Labour Relations Act

The Labour Relations Act (LRA) is the cornerstone of legislation governing the workplace. Before 1979, the LRA was only applicable to white workers as only white trade unions were allowed to register in terms of the Act. The primary role of the LRA is to regulate the employment relationship between employer and worker; both collective and individual rights. Collective matters include registration of unions, regulation of industrial councils, disputes over wages; strikes and lock-outs. Individual issues include dismissals, retrenchments and victimization.

Only workers who fall within the definition of 'employee', and who are not expressly excluded, are covered by the scope of the Act. An employee is defined as any person who is employed or working for any employer and who is receiving any remuneration (payment in money or in kind) or any person who in any manner assists in the carrying on of the business of the employer. An employer is defined as any person who employs or provides work for any person and who remunerates that person. In short, an employee is someone who works for an employer in return for pay. In addition the worker must be subject to the 'control and supervision' of the employer. Independent contractors, like actresses and building contractors, are not regarded as employees. It is therefore questionable whether home-workers[10] who are predominantly women, will enjoy the protection of the court (Madonsela, 1995).

Self-employed workers are not covered by the Act as they do not work for an employer. Furthermore, women who do unpaid labour at home fall outside the scope of the Act as they are not in an employment relationship.

Over the years many employees such as farmworkers, domestic servants, civil servants, teachers and workers employed by charity organizations have been excluded from the LRA or covered by separate legislation. The new LRA to come into effect next year will change this.

Any dispute concerning the workplace can be taken to the Industrial Court, a specialist labour tribunal. The judges of the court (presiding officers) are appointed by the Minister of Labour. The vast majority are men. No special provision is made for the appointment of women nor is there a quota system in place. Presiding officers do not receive

special training in relation to sex discrimination matters. They are merely appointed by reason of 'their knowledge of the law'

The new labour law abolishes the Industrial Court and brings in both the Commission for Conciliation, Mediation and Arbitration (CCMA) and a Labour Court. The CCMA is empowered to conciliate all disputes referred to it. Disputes concerning dismissals for misconduct and incapacity that are not resolved after conciliation, will be referred to arbitration by the CCMA for a final resolution. The dual functions of the CCMA as both mediator and arbitrator will expedite the speedy resolution of the dispute and cut out lengthy procedures. Cases will be less costly as legal practitioners will not be allowed to represent clients. Disputes concerning dismissals for operational requirements, pregnancy and discrimination that are not resolved by the CCMA at the conciliation stage, will be referred to the Labour Court for a final order.

Only disputes alleged to be unfair labour practices are heard by the Industrial Court. An unfair labour practice is defined as any act or omission other than a strike or lock-out which has the effect that;
(i) any employee may be unfairly affected or his/her employment opportunities or work security may be prejudiced or jeopardized thereby;
(ii) the business of any employer may be unfairly affected or disrupted thereby;
(iii) labour unrest may be created or promoted thereby;
(iv) the labour relationship between employer and worker may be detrimentally affected thereby.
This definition is wide and the Industrial Court has discretion to interpret it. Both disputes concerning collective and individual matters have been heard. The court has considered disputes in respect of the refusal to negotiate in good faith, victimization of workers because of union membership, selective dismissal or re-employment, dismissal without a substantively fair reason or without compliance with a fair procedure, the use of derogatory language, the dismissal of strikers for participation in a lawful strike, the failure to renew a migrant worker's contract where there had been reasonable expectation of renewal, retrenchments and so on (Rycroft and Jordaan, 1992).

Disputes that arose from sex and race discrimination have also been heard by the court. In *Randall v Progress Knitting Textiles Ltd*[11] the court decided that the dismissal of the applicant as a result of pregnancy constituted an unfair labour practice and awarded compensation in the sum of R21 000. In *J v M*[12] the court considered sex discrimination in the form of sexual harassment. In this matter, the applicant was dismissed because he was found guilty of sexual harassment by the employer. The court held that the dismissal of the applicant was not unfair because sexual harassment was a serious offense.

In respect of race discrimination, the court did not hesitate to come to the assistance of the applicant even though the race discrimination was committed by a trade union and not the employer. The court decided in *Chamber of Mines v Mineworkers Union*[13] that the refusal by an all-white union to assist in training Coloured workers constituted an unfair labour practice.

At present a job-seeker cannot dispute the discriminatory recruitment practices of an employer as she is not covered by the Act. Nothing stops a trade union from taking up this issue with an

employer (Nyman, 1994). However, the new Labour Relations Act does make provision for prospective employees and does prohibit pre-entry discrimination.

But the new law has a number of problems. It does not explicitly cover homeworkers. It does not state in the Explanatory Memorandum that one of its aims is the eradication of sex discrimination. And it does not specifically cover issues concerning women. For example the issues that workplace forums can deal with omits explicit mention of sexual harassment and childcare facilities (Nyman-Ray, 1995). The Bill also fails to include sexual harassment in its list of dismissable offenses (Madonsela, 1995).

While the unfair labour practice has been construed wide enough to include sex discrimination disputes, it is preferable to have specific sex discrimination legislation along the lines of Britain or North America. This can make provision for specialised tribunals which are trained and qualified in adjudicating sex discrimination cases. In this manner the eradication of sex discrimination can be prioritised by the legislature. Special provision can also be made for monitoring mechanisms as is the case with the Ontario legislation referred to elsewhere.

While special legislation will advance the interest of women workers, this should not be seen as a substitute for organising women workers into trade unions. As long as the LRA and future sex discrimination legislation is based on a complaints system, the role of unions remains critical.

At present the trade union leadership is dominated by males, even where the majority of union members are women. As an example, although 70 percent of SACCAWU's members are women, only 7 percent of its regional leadership and 33 percent of its national leadership are women (Baskin, 1994). Union officials are also predominantly males. In consequence, union policies and issues for collective bargaining are largely determined by males.

In short, legislative intervention should be combined with the shopfloor organising of women and the election of women into leadership positions. A quota system guaranteeing a certain number of seats for women in executive positions in the union will ensure that women occupy leadership positions. The Australian union federation (ACTU) has adopted this approach.

4.3 The Interim Constitution

The implementation of the Interim Constitution heralds a radical change in our legal system. Parliament is not entitled to pass any law which is in conflict with the Constitution, and if it does so the Constitutional Court has the right to declare such law to be unconstitutional.

A further important feature is the introduction of a Bill of Rights, 'fundamental rights' which can only be amended by a two-thirds majority of parliament. The three fundamental rights pertaining to sex discrimination are the 'equality clause', the 'anti-discrimination clause' and the 'affirmative action clause'.

The equality clause states that 'every person shall have the right to equality before the law and to equal protection of the law'. The anti-discrimination clause states that 'no person shall be unfairly discriminated against, directly or indirectly, and,... on one or more of the following grounds in particular: sex, ethnic or social origin, colour...'

The affirmative action clause ensures that such programmes are expressly excluded from the ambit of both the equality and anti-discrimination clause. This means that for example, where a public employer applies affirmative action in employing a black female above a white male applicant, such employment will not be regarded as being discriminatory against the white male, particularly where the two job applicants have the same qualifications.

However, a complication arises where the white male has better qualifications than the black female. Would an employer still enjoy the protection of the affirmative action clause? In this instance, the court has to turn to the 'interpretation clause' or assistance. This says that in interpreting the provisions of the Bill of Rights, 'the court shall promote the values which underlie an open and democratic society based on freedom and equality and shall where applicable, have regard to public international law'.
The Constitutional Court would therefore have to decide whether public opinion favours such affirmative action.

While the Interim Constitution represents a major advance in the struggle against apartheid it still has many limitations. Does the Constitution only operate 'horizontally' between the organs of the state and private citizens, or does it also operates 'vertically' between private citizens? At present, the debate seems to weigh in favour of restricting the Bill of Rights to horizontal application. [14]

The practical implication of such an interpretation is for example, if an employer discriminates against a female worker, she would not be able to take the employer to the Constitutional Court, unless she worked in the public service. The effect may be that workers in the private sector will be precluded from instituting sex discrimination actions against their employers, at least in respect of constitutional challenges.

A further criticism is that litigation in respect of constitutional matters will be largely inaccessible to the working class as the legal costs of adjudication are very high. The legal costs of hiring an attorney and an advocate who are specialised in constitutional litigation, combined with the lengthy duration of a constitutional trial, make litigation the preserve of the wealthy, or of organised interest groups.

Nevertheless, the Bill of Rights remains an important legislative framework and serves as a basis for unions to negotiate affirmative action programmes with employers and oppose sexist practices on the shopfloor.

4.4 Unemployment Insurance Act (1966)
The Unemployment Insurance Act (1966) provides for an Unemployment Insurance Fund (UIF) from which unemployment, maternity, and illness allowances can be paid out. It benefits only those who have contributed to the insurance and not every citizen. Individuals who have never been employed before do not benefit. The Unemployment Insurance Fund (UIF) is financed by employers and workers (1% of the employees earnings and a matching contribution from the employer). The state contributes money annually and is also the underwriter.
The UIF covers all employees and apprentices but excludes:

- people earning above R69 420
- casual employees
- homebased workers
- persons employed for less than one full working day
- domestic workers

husband or wife of an employer working for such an employer seasonal workers.

When a contributor is or becomes unemployed, he/she is entitled to the following:

- *unemployment benefits* — before any contributor receives the payment, he/she must submit proof of being unemployed and of actively seeking work.
- *illness benefits* — this benefit is given to a contributor who is unemployed and unable to perform work as a result of an illness.
- *maternity benefits* — a female contributor who is unemployed may be paid maternity benefits for a period not exceeding twenty-six weeks.
- *adoption benefits* — a female contributor who is unemployed and has legally adopted a child under the age of two is entitled to adoption benefits.

For an individual to qualify he/she should be in employment for three months. And the maximum benefit is only a limited percentage of previous earnings and is not paid for more than six months (26 weeks). While the Act now covers farmworkers, domestic workers remain excluded.

The name of the act can be confusing given that it covers, for example, a woman on maternity leave. Such leave is totally different from unemployment. There is perhaps a need to separate the unemployment and maternity leave.

4.5 Basic Conditions of Employment Act (BCEA), 1983

The BCEA sets minimum terms and conditions of employment for most workplaces. Casual, temporary and part-time workers are not covered by the Act. The Act provides guidelines and minimum conditions regarding working hours, annual and sick leave, calculation of wages, termination of employment, overtime, public holidays, prohibits certain employment. Through recent amendments domestic and farmworkers are now covered. For example, they are not permitted to work more than 46 hours per week unless overtime is paid.

Although the act provides sick leave for all workers who are covered by it, it does not give security for the job (more especially for domestic workers). For example, if a domestic worker takes sick leave her job is not guaranteed. The nature of employment for domestic workers make them more vulnerable when faced with this situation. Employers are free to hire or fire them whenever they feel like. Therefore, the act should provide extensive job security for this category of workers.

The BCEA provides for paid sick leave for domestic workers. But, in reality, this is rarely complied with by employers. No one follows up such breaches. Even domestic workers are often not aware of their rights. The BCEA also forbids employers from employing pregnant workers for a period of one month before and two months after giving birth.

Recommendations

- Women should be adequately represented in the courts. If necessary, a quota system should be introduced. Presiding officers and judges should receive training in respect of gender issues.
- The LRA should be amended to include issues which concern women specifically, e.g. childcare and sexual harassment.
- The Interim Constitution should be amended to make it explicitly applicable to litigation between private citizens. The legal aid system should provide financial assistance to low-income prospective constitutional litigants.
- Domestic workers should be covered by the UIF, as they are more likely to be unemployed because of insecurity of their jobs. This can work only if their employment relations are changed.(e.g. if they can have one employer or are employed through an employment agency in line with approved labour standards).
- Mechanisms should be developed for employers to contribute a larger proportion to the fund than workers.
- There should be separate legislation dealing with the issue of maternity leave.
- The BCEA should deal with the issue of parental leave (i.e. leave for mothers and fathers during childbirth).

CONCLUSION

It must be acknowledged that women have suffered the most severe forms of discrimination. This discrimination obviously differs between race groups. The social burden borne by women, especially under apartheid, is enormous.

By examining women's position in the workplace, this report has attempted to highlight some of the obstacles that women still encounter in the labour market. A large number of women are unemployed. Although women's employment has increased, it has not risen proportionately in different levels of occupations. Rather women are crowded in specific positions, which tend to be low paying and classified as less skilled. The patriarchal nature of our society relegates women to certain positions and denies them a role in decision-making. This denial has been transferred to labour market, where women are generally given low level positions that do not require any decision making. There is a need to improve their conditions by challenging the sexual division of labour that confines them to certain levels and men to others.

Women continue to bear almost sole responsibility for maintaining the household. More attention must be given to the ways in which women's participation in the labour market is shaped by their responsibility for reproduction and gender relations. Because of unpaid labour responsibility (e.g. childcare), women stand limited chances of getting promotions. For example, time off taken from their jobs creates problems when they apply for promotions.

Discrimination in education and training also affects women negatively, specifically black women. Although white women have almost the same education level as their white counterparts, they do not occupy the same positions. Women have not acquired adequate education compared to men, partly because of household responsibility. As a result, positions which require higher education (e.g. management) are more often filled by men. Education and training programmes are necessary to overcome the barriers and taboos regarding women's position.

Assumptions that women are responsible for reproduction are used to justify discriminatory practices during recruitment. Women are not given certain positions since it is expected they will not handle difficult situations because of reproductive responsibilities. When employers recruit they often look for men or for people in certain age categories.

If this means that solutions aimed at improving the conditions of women must include a change in power relations in the society, economically, socially and politically. And human resource development strategies need to target gender as well as race if historical imbalances in the labour market are to be corrected.

It is clear from this report that legislation must be changed. But the simple act of abolishing discriminatory laws will not eliminate discrimination, unless there is constant monitoring and a change in attitudes of the broader society.

Awareness of the need for equality between men and women must be developed as much as the need for racial equality. On both matters, much remains to be done.

APPENDIX A

Paterson Job Grading System

Paterson Grade	Description
NE	Non - Executive Directors
F	Executive Directors
E Upper(EU)	Senior - Executive Management
E Lower(EL)	Senior Management
D Upper(DU)	Middle - Senior Management
D Lower(DL)	Junior - Middle Management
C Upper(CU)	Assistant Management, Senior Supervisory & Junior Professional
C Lower(CL)	Supervisory, Artisan & Technician,Senior Operative & Senior Admin/Clerical/Secretarial and Graduate Entry Level
B	Apprentice & Trainne Technician, Operative, Admin/Clerical/Secretarial
A	Entry Level Operative/Labourer
U	Ungraded Staff

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END NOTES

[1] This is an expected scenario as the retail sector has been categorised as a "typical female" sector compared to mining sector.

[2] Cited in 'Equal pay in the Netherlands' (1993) Asscher-Vonk Equal Pay Protection in Industrialised Market Economies: In Search of Greater Effectiveness (eds F. Eyraud et al)

[3] The living wage campaign was launched in 1986.

[4] Sub-section 1(1)(i) No doubt sub-sections (ii)-(iv) of the unfair labour practice definition could also cover wage discrimination.

[5] (1988) 9 Industrial Law Journal 410

[6] Canada is a federal state and has its own equal pay legislation. Ontario is one of the 10 provinces in Canada. Each province in turn has its own equal pay legislation.

[7] The Act also deals other gender discrimination in employment, eg.hiring, advertising of vacancies.

[8] Notwithstanding, the GDR could boast of inroads made in certain typical male jobs; in 1983 women accounted for 57% of dentists, 52% of doctors and in 1977-79, women accounted for 45% of judges and 30% of lawyers (Einhorn, 1991:2).

[9] This was adopted on the 26 May 1995 - by COSATU Exco

[10] Is defined as workers who work from their homes for an employer.

[11] (1992) 13 Industrial Law Journal 200

[12] (1989) 10 Industrial Law Journal 755

[13] (1989) 10 Industrial Law Journal 133

[14] See Nyman, 1994 for a summary of the legal argument.

WHILE ALL NALEDI PUBLICATIONS ADOPT A PRO-LABOUR PERSPECTIVE, THEIR CONCLUSIONS DO NOT REPRESENT THE POLICIES OF COSATU.

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