

FEDUSA



EQUAL OPPORTUNITIES FOR WOMEN



Mary Malete, FEDUSA President

The concept of gender pertains not only to women, but to men as well. Women's issues though, do tend to take the upper hand, due to the years of unequal treatment and discrimination against females. The process of gender mainstreaming is an ongoing process that affects both sexes, physically, emotionally, socially and economically, hence the challenge for inclusive training for men and women on all human issues.



Chez Milani, FEDUSA General Secretary

It is important that men make space for women at leadership and structural level within the union movement. It is, however, equally important that women avail themselves to actively participate in existing structures. Should either one of the aforementioned not occur, then the required and necessary empowerment of women will not happen.



Lauretta Rudolph, FEDUSA Equity Forum Chairperson

Gender equality means equality between women and men. It includes equal employment; equal opportunities; equal access to resources and rewards; and more importantly, equal power to influence decisions made within our society. When we talk about equality, it does not imply that men and women are the same, but that opportunities and life chances will not depend on the sex of an individual.



Dawn Le Roux, FEDUSA National Gender Co-ordinator

FEDUSA is a non-racist, gender sensitive organisation that is committed to promoting gender equality, especially in the workplace. For too long men have been the dominant forces in the workplace. The time has come to level the playing fields where men and women can work side-by-side and together, in a partnership of equals.



TABLE OF CONTENTS

	PAGE
FOREWORD	1
INTRODUCTION TO EQUALITY	4
<i>Chapter 1</i>	
TRADE UNIONS AND GENDER EQUALITY	5
<i>Chapter 2</i>	
PROMOTING GENDER EQUALITY WITHIN UNIONS	9
Increasing the participation of women in unions	9
Recruiting women as union members	10
Promoting the participation of women at all levels of the union structure	12
Internal structures for the promotion of gender equality	16
<i>Chapter 3</i>	
PROMOTING GENDER EQUALITY AT THE WORKPLACE	19
Why is the trade union role critical?	19
Gender equality bargaining	22
<i>Chapter 4</i>	
GENDER EQUALITY BARGAINING	36
The issues for gender equality bargaining	36

Chapter 5	
ORGANISING THE UNORGANISED: INFORMAL SECTOR AND OTHER VULNERABLE WORKERS	77
The challenge of the informal sector for trade unions	98
Chapter 6	98
LABOUR LEGISLATION	99
Labour Relations Act, 1995	102
Basic Conditions of Employment Act	
Employment Equity Act	107
	107
CONSTITUTIONAL RIGHTS	110
Health	113
Social Security	118
Freedom, Security and Physical Integrity	121
Legal Status and Capacity	
Housing	126
Chapter 7	
COMMISSION FOR GENDER EQUALITY (CGE)	128
CONCLUSION	

The aim of this booklet is to highlight gender issues and inform women of their rights, in addition to providing trade unions with useful information on the gender subject.

INTRODUCTION TO EQUALITY

Over the last thirty years, there has been considerable evolution in the thinking about gender equality issues and the actions needed to achieve real changes in the position of women vis-a-vis men. Prior to the 1970s, women were defined mainly in terms of their conventional reproductive roles, and efforts to improve women's welfare focussed on such programmes as literacy courses, home economics, child care and family planning. Though no doubt valuable, such welfare and family-oriented programmes had the effect of reinforcing women's traditional role in the family.

Since the 1970s, there has been a shift to the division of labour based on sex, and the impact of development and modernization strategies on women.

It is important to understand that improvements in women's status require analysis of the relations between men and women, as well as the concurrence and cooperation of men.

As illustrated in the Beijing document:

"Achieving gender equality and empowerment of women requires redressing inequalities between women and men and girls and boys and ensuring their equal rights, responsibilities, opportunities and possibilities. Gender equality implies that women's as well as men's needs, interests, concerns, experiences and priorities are an integral dimension of the design, implementation, national monitoring and follow-up and evaluation, including at the international level, of all actions in all areas."



CHAPTER 1

TRADE UNIONS AND GENDER EQUALITY

"Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world... Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Gender equality is a fundamental human right and an essential condition for achieving effective democracy. The democratic structures of trade unions and their mandate to promote and protect workers' rights make unions important vanguards in the fight against discrimination. Collective bargaining is a key means of achieving equality for men and women at work, and trade unions are a major force in social dialogue and social action at workplace, community, national and international levels.

The promotion of gender equality has assumed additional significance given the increasing participation of women in paid work all over the world and the need for employment policies and trade union strategies to respond to such change. More and more women are working outside the home. However, gender remains an important source of labour market discrimination, and women compared to men continue to be disadvantaged and vulnerable to exploitation and in need of organization, representation and social protection:

"Women are joining the world's workforce at an accelerating pace but mostly at the bottom in low paid, low status, precarious jobs. The economic and social cost of discrimination, particularly against women but also on the grounds of race, colour, creed, political opinion, sexual orientation, disability and age, is incalculable. Unions are fighting discrimination because it is wrong, but we are also convinced that promoting equality benefits the whole of society by releasing the productive potential of people who are unfairly denied decent work."

The important role of trade unions in the promotion of gender equality and protecting vulnerable women workers was acknowledged in the Platform for Action of the United Nations Fourth World Conference on Women (Beijing, September 1995), which called on governments and all social actors to:

"Recognize collective bargaining as a right and as an important mechanism for eliminating wage inequality for women and to improve working conditions" and "Promote the election of women trade union officials and ensure that trade union officials elected to represent women are given job protection and physical security in connection with the discharge of their functions."

The Beijing Platform for Action encourages "efforts by trade unions to achieve equality between women and men in their ranks, including equal participation in their decision-making bodies and in negotiations in all areas and at all levels" on the basis that such action is pivotal to the general process of the advancement of women. The World Summit for Social Development (Copenhagen, March 1995) also adopted specific commitments and a Programme of Action relating to 'basic workers' rights'.

These basic workers' rights were reaffirmed by the International Labour Conference in June 1998 when it adopted the Declaration on Fundamental Principles and Rights at Work and its Follow Up. The Declaration provides that all member States of the International Labour Organization (ILO) have an obligation to respect, to promote and to realise, in good faith, certain principles, namely, freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin in respect of employment and occupation.

Five years after Beijing, the United Nations Twenty-third Special Session of the General Assembly on "Women 2000: Gender, equality, development and peace for the twenty-first century" (New York, June 2000) negotiated a final outcome document on Further Actions and Initiatives to Implement the Beijing Declaration and the Platform of

Action that commits governments and all national and international actors to "Respect, promote and realize the principles contained in the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up and strongly consider ratification and full implementation of ILO Conventions which are particularly relevant to ensure women's rights at work."

Unions have been giving priority to women as, a target group for recruitment and have been attempting to increase female representation in leadership positions. Efforts within their own internal structures and policies are critical because unless women are sufficiently represented in the executive, unions cannot be credible to prospective female members nor can they be attuned to the distinct concerns of working women. Concerns such as equal pay for work of equal value, sexual harassment and family-friendly policies are more and more being treated as mainstream union issues, and unions are accepting the importance of promoting gender equality through the collective bargaining process. Trade unions are also looking for innovative ways to reach and organize workers in the services sector, outside the formal workplace, in various types of atypical and precarious forms of work and in the ever-growing and amorphous informal sector. Women account for the bulk of such workers.

But the tasks have not been easy. For a number of reasons, women workers have been described as "hard to organize" or may not themselves understand or appreciate the potential role of trade unions on their behalf. In addition, trade unions are themselves operating under increasingly difficult conditions. Globalization, technological advances and rapid changes in labour markets and work organization are challenging traditional union strategies and sometimes even the *raison d'être* of trade unions. While trade unions are conscious of the need to become fully engaged in the challenge of promoting gender equality, they are often faced with the difficulty of appreciating how to do so under rapidly changing and often hostile conditions.

Women need unions

- increasing female labour force participation has not generally been accompanied by improved working conditions or social protection;

- women are more likely than men to be victims of labour market failures and distortions;
- women account for the bulk of atypical workers who are inadequately covered by labour legislation;
- women bear the brunt of combining work and family responsibilities;
- misperceptions persist about the role and contributions of women in employment;
- women workers need organization, representation and social protection;
- gender equality issues and women's concerns have not been adequately addressed in collective bargaining;
- in many countries, unions have been in the forefront of action to promote equality at work;
- unions are important interest and lobbying groups which can influence government policy and legislation on women's and equality issues.

And unions need women

- women account for an increasing proportion of the workforce;
- to be credible and strong, unions must address the priority concerns of its current and potential members;
- to be credible to women, unions must demonstrate that gender equality is an integral part of their own policies and structures;
- growing numbers of women are refusing to behave as victims and are standing up for their rights;
- women members are changing the way unions work and enhancing the image and influence of unions;
- the promotion of gender equality helps unions strengthen and reaffirm their role in social dialogue and social action;
- the promotion of gender equality provides common grounds for unions to forge alliances with other social actors.

CHAPTER 2

PROMOTING GENDER EQUALITY WITHIN UNIONS

Increasing the participation of women in unions

In spite of their increasing participation and the fact that they constitute most of the new members, women are still under-represented in unions. For example, out of the total membership of the International Confederation of Free Trade Unions (ICFTU), to which FEDUSA is affiliated, of 140 million in some 145 countries, women account for about 43 million. Women are even more seriously under-represented in trade union leadership. While they make up about 39 per cent of global trade union membership, they represent only one per cent of the decision-making bodies of unions. Gender equality is far from being a reality within the trade union movement.

Unions must take steps to overcome the barriers to female participation and to ensure that women are visible and active in all aspects of union life - as members, activists and leaders. If trade unions are to champion gender equality in employment as a basic human and workers' right, then first and foremost they have to show that equality is an integral part of their own internal policies and structures. Unions cannot be credible unless women are adequately represented and fully involved in all union structures and business.

It is important that trade unions formulate specific statements of policy on gender equality. Such statements could be in the form of resolutions and policy documents adopted by congresses or executive boards, special publications, position papers, equality plans, guidelines on gender, positive action programmes. A policy statement can serve as a benchmark for future union action. Implementation of the policy on gender equality can be effective only when treated as a mainstream union issue rather than a "women only" issue.

Barriers to women's participation in union membership and leadership

- Women do not understand or appreciate how unions can benefit them;

- Women fear reprisals from employers (including losing their jobs) for joining unions;
- Women do not have time to join or participate in union activities because of conflicting family responsibilities, and childcare facilities are lacking or too expensive;
- Women, especially those with low levels of education, lack the confidence to join unions or to aspire to leadership positions;
- Religious and cultural norms and traditions prevent women from joining;
- Women face objections from their spouses or families;
- The male-dominated culture or activities of the union or hostile reactions from male members discourage women from joining;
- Stereotyped ideas persist about women's abilities, preferences and roles;
- Unions are not sensitive to the needs of women workers;
- Membership dues are a problem especially for poor working women;
- Women are more likely than men to be in atypical forms of work or in the informal sector where they are difficult to reach and organize;
- There may be legal constraints to some groups of women workers joining unions;
- Entrenched union rules and structures are not conducive to women's participation and advancement to leadership positions;
- Informal procedures in the unions for nominations or appointments rely on established male networks.

Source: Accompanying report on The Role of Trade Unions in Promoting Gender Equality.

Recruiting women as union members

To target women for recruitment, unions must recognize that women have particular needs and priorities.

Recognizing that women may have particular needs and priorities different from those of men, unions need to adopt special measures to recruit female members. Unions have found that recruitment tends to be more successful when they adopt a multi-pronged approach consisting of a range of measures over a period of time, rather than rely on any single measure:

- Raise awareness of the benefits of unionization;
- Improve the public image of unions, including publicizing success stories;
- Solicit the views of women workers, understand and give credence to their concerns and needs;
- Make women visible in unions;
- Provide services to specifically meet the needs of women workers;
- Carry out special organizing campaigns.

Raise awareness of the benefits of unionization

A survey of national centres and trade unions found that the single most important reason why women do not join unions is because they do not understand how unions can help them. Therefore, unions need to raise awareness and sensitize potential women members on the benefits of unionization. "Empowerment, first and foremost, requires awareness which is fed by knowledge."³ Awareness raising is part and parcel of organizing and educational campaigns. Publicity, including making use of the media, helps to get the message out to the largest number of people possible. Guidelines:

- Carry out research - through talking to women, conducting surveys, polling methods, holding discussion/study groups, etc. - so as to have a clear understanding of the concerns, needs and constraints of the potential women members targeted;
- Gather gender-disaggregated statistics and facts, so as to be able to make the case convincingly;
- Formulate and present messages that women can identify with and be motivated by;
- Widely publicize the successes of the union in dealing with gender equality and women's issues;
- Determine the types of activities and media that would be most appropriate for reaching the target groups - information sheets, leaflets, press kits, internet and e-mails, seminars, study circles, etc.
- Recognize that many women, especially those with low levels of education, may lack the self confidence to join unions:

Promoting the participation of women at all levels of the union structure

"The trade union movement is faced with some stark choices. Unions can continue to support widespread discrimination within their ranks, while they talk about equality and solidarity, or they can tackle the problems they face in integrating women."

The traditional thinking was that women should find their own place within existing union structures, but often these structures are rigid, rather bureaucratic, male-dominated and intimidating to women. Traditionally too, women's presence has been concentrated in those structures associated with female stereotypes, and they have been poorly represented in the executive or in the structures dealing with economics, research, organization, negotiation, international affairs, etc.

More and more unions are now introducing statutory reforms to make their structures more gender-sensitive and women-friendly. They also have affirmative action or positive measures to deal with the effects of past direct and indirect discrimination and serious disadvantages that women members face. Unions have also found that where there is a high degree of awareness and appreciation of gender equality issues among the general membership, the participation of women in leadership positions tends to be more commonplace.

To overcome the obstacles to the proportional representation and active involvement of women, not only in leadership positions but in all union structures, unions can:

- Adopt specific policies, plans or targets for improving gender equality and the position of women in the union;
- Adopt positive measures to increase women's representation in leadership positions;
- Amend the union constitution or statutes to make structures more conducive to gender equality and "women-friendly";
- Keep statistics disaggregated by sex;
- Raise awareness of gender equality and women's issues among both female and male membership;
- Provide education and training for women, in particular to build their

confidence and leadership capabilities;

- Address the specific needs and constraints of women, so as to enable them to participate more actively.

Adopt gender equality policies, plans or targets

Many unions have demonstrated their commitment to improve proportional representation within the union and to encourage women to seek leadership posts by formulating and implementing:

- a general policy statement or resolution on gender equality;
- an equality plan;
- specific goals or targets for women's representation at different levels of the union structure;
- an affirmative action programme.

Checklist:

- Turn policy statements and plans into reality with implementation steps and specific practical measures;
- Set a timetable for achievement;
- Support or back up the policies, plans, affirmative action programme with the necessary changes in union statutes or constitution and with proper allocation of financial and human resources;
- Monitor and evaluate implementation.

Adopt positive measures to increase women's representation in leadership positions

Goals or policy statements alone may not be adequate to achieve gender equality, especially where direct or indirect discrimination against women is deeply rooted in union structures and practices. Therefore, many unions have adopted affirmative action programmes or positive measures particularly to increase the participation of women in leadership positions, including:

- reserved or additional seats for women on executive and decision-making bodies;
- a quota system or numerical targets for women's participation in congresses, executive and decision-making bodies, committees, negotiation teams, education and training programmes, etc.;
- proportionality principles;
- double nominations, so that both women and men are included on can-

didate lists for union elections.

The experience of unions has shown that such positive measures lay the basis for both faster and more spontaneous progress towards gender equality. Unions have reported that where they have reserved seats for women in the executive, in fact, women have succeeded to being elected to such positions in their own right. Of course, it is important to monitor and keep statistics of implementation of these measures.

Amend the union constitution or statutes

It is often necessary to amend the union constitution or statutes to make structures more conducive to gender equality and "women-friendly". By introducing changes in their rules and regulations, unions demonstrate tangibly their commitment to the promotion of gender equality and allow positive measures to be more effectively implemented. Unions can introduce statutory reforms for several purposes. Guidelines:

- Establish gender equality or women's units;
- Ensure that the gender equality or women's unit has adequate financial and human resources;
- Give mandatory, rather than advisory or consultative, status to the gender equality or women's unit;
- Reserve seats, establish a quota system or numerical targets for women on executive bodies;
- Observe a proportionality principle so that women are adequately represented at all levels of the union structure and in all education and training programmes;
- Ensure that women have places at union congresses;
- Adopt new ways of conducting union business, such as the way in which nominations are made for posts.

Keep statistics disaggregated by sex

Many unions are still not able to provide accurate information on their membership by sex. Although the policy of the ICFTU requires separate reports on male and female membership in the annual questionnaire, union figures are often based on estimates. If unions are serious about promoting gender equality, they must systematically maintain and publicize statistics disaggregated by sex of membership at each level of the union structure and of participation in union activities. Such statistics are

also necessary for monitoring and evaluating the progress made or the effectiveness of different action taken to promote gender equality.

Raise awareness of gender equality and women's issues among both female and male membership

Unions have found that where there is a high degree of awareness of gender equality and women's issues among the general membership, the participation of women in leadership positions is more likely to be regarded as unexceptional. Sensitization is particularly important where stereotypes and traditional attitudes regarding the roles and capabilities of women remain strong, and also where the hostility or lack of support from male leaders and members is a serious barrier.

Guidelines:

- Target male-dominated unions through awareness raising campaigns on how improved representation of women at all levels will benefit them and enhance the image of the union;
- Give increased visibility to women leaders;
- Provide leadership by example; get women leaders to be role models;
- Use non-sexist, gender-neutral language in all union communications;
- Gather and publicize regularly figures on participation by sex of the membership in all union structures and activities;
- Ensure that union education and training materials incorporate gender equality and women's issues and reflect the female voice;
- Arrange special activities that promote solidarity among male and female union members:

Provide education and training for women members

Education and training programmes are very important for:

- raising women's self confidence and assertiveness so that they can participate more actively in union structures and activities;
- awareness raising on the presence and strength of women in the trade union movement;
- developing solidarity among union members;
- changing the conservative or traditional attitudes of male leaders;
- correcting gender stereotypes;
- training women for leadership positions.

Such education and training courses can target only women or be general courses open to both women and men. In the general courses, it is

often necessary to adopt positive measures to ensure proportional representation of women. The courses can cover a wide range of issues: basic training, leadership training, training of organizers, training of trainers, skills training, the training of study circle leaders, consciousness raising, and training in equal opportunities and gender issues, training of negotiators, legal and economics courses, training on the role of women in development, management training, legal literacy, time management, health and safety issues.

Address the specific needs and constraints of female members

A major reason for women's lower participation in unions is the constraints they face in terms of family responsibilities. For unions to be more "women-friendly", it is important that their own structures and policies are more family-friendly. Unions can also have women-specific programmes and activities to address women's particular concerns and problems. Many of these efforts have been evaluated to be successful because they directly meet the needs of women within and outside the workplace, allow women to feel comfortable participating, help them to gain confidence, and make them feel that the union is relevant to them.

Checklist:

- Provide appropriate trade union training and workers's education;
- Negotiate with employers for women to have paid time off work to ensure their participation in union activities;
- Arrange meetings and activities at times that do not conflict with family responsibilities;
- Provide child care facilities to assist women to participate in union activities;
- Hold meetings, seminars to discuss specific equality or women's issues, such as on sexual harassment, breast cancer, family planning, mothers' classes, domestic violence, etc.

Internal structures for the promotion of gender equality

Unions all over the world are appreciating the need for special structures to encourage the participation of women in trade union activities and to create the conditions for equal opportunities and treatment within trade union organizations. These special structures can take a number of forms and have a number of functions and responsibilities. The special structures include women's or equality:

- committees;
- departments;
- wings;
- secretariats;
- commissions;
- sections;
- officers.

The main differences between the different types of structures are that the committees are usually elected within the union, the wings or sections are parallel structures (for women and men) in the unions, and the departments, secretariats or officers are appointed and include paid, full-time positions.

The women's structures deal with women's affairs and equal opportunity issues and are especially important in trade union movements which are male-dominated and in which women's interests and perspectives would otherwise be overlooked or ignored. Rather than women's structures, some unions are setting up equal opportunity units to reflect the ideal that gender equality is not just a "women's issue" that can be dealt with only by including a women's component in activities and that both men and women members have a stake in improving the position of women.

The main functions of the women's unit or the equality unit within unions are to:

- provide women effective representation within the union;
- give women space to raise the issues which affect their lives and work;
- create awareness of the special needs and constraints of women;
- promote advocacy for women's issues and gender equality concerns;
- help to enhance the visibility of women in unions;
- help to enhance the visibility of women in unions;
- spearhead efforts to achieve gender parity in all union activities and programmes;
- assume specific responsibility for mobilizing and organizing women workers;
- organize women's conferences regularly or on specific topics;
- implement equality policies and programmes; and
- monitor progress in implementation of equality policies and programmes.

For the women's or equality structures to be effective, it is important for unions to:

Checklist:

- Confer them statutory or constitutional, rather than just advisory or consultative, status within the union;
- Ensure that they are integrated into the mainstream work of the union - otherwise, there is a high risk of marginalization of the women's or equality structure;
- Provide them adequate financial and human resources, including their own budget - currently many women's structures are hampered by the inadequate resources and often have to raise their own funds or take loans for special activities;
- Assign them power to take initiatives;
- Enable them to have direct inputs to the decision-making bodies - either by reporting directly to the executive and/or being represented on it;
- Do not relegate women's issues or gender equality concerns to the women's or equality structure, so that only women discuss and deal with them and the rest of the union can forget about them.

"When establishing a women's committee, it is important to set down in writing the aims and planned activities of the women's committee, together with mechanisms for monitoring progress and how the union will fund the work of the committee. These guidelines can also include measures to integrate the committee, its work and its members into all areas of union work."



CHAPTER 3

PROMOTING GENDER EQUALITY AT THE WORKPLACE

Why is the trade union role critical

Inequalities between women and men persist. Globalization has created both unprecedented economic opportunities as well as deepened social inequalities and personal insecurities. Both women and men have been affected. However, gender inequalities persist and it is overwhelmingly women who suffer the most:

- With 54 per cent of working age women in the labour force as compared to over 80 per cent male participation, the world is not making the most of its female talents and potentials.
- Poverty is increasingly feminized. Women constitute 70 per cent of the world's 1.3 billion absolute poor.
- Half of the world's labour is in sex-stereotyped occupations, with women dominating those occupations which are lowest paying and least protected.
- More and more women are entering paid work but more jobs have often not meant better jobs. In developed countries, most new employment has been in part time jobs, while in developing countries women have gone mainly into the informal sector and home-based work. Globally, women earn 20-30 per cent less than men.
- Women continue to be mainly responsible for the "care economy". If the value of the unpaid, invisible work done by women - approximately US\$11 trillion per annum- is included, global output would be almost 50 per cent greater
- Some women have breached glass walls and ceilings, but worldwide they hold only 1 per cent of chief executive positions. The majority experience the effects of the so-called "sticky floor" - on the bottom rungs of their occupation.
- More women are creating their own businesses, which are important sources of employment. But the policy, regulatory and institutional environments are often unfriendly to women entrepreneurs.
- Women are increasingly migrating, both legally and illegally, for employment. Female migrant workers are among the most vulnerable to exploitation and abuse
- Women continue to have less access than men to investments in skills,

knowledge and lifelong learning. In a world increasingly dominated by information and communications technology, gender inequalities lead to new forms of social exclusion.

- The gender gap is graying into a poverty trap: women face a much higher risk than men of a drastic drop in living standards when they retire. Yet women account for the majority of the over-60 population in most countries.

Source: ILO Gender Promotion Programme. 2000. More and Better Jobs for Women and Men. Geneva: GENPROM.

“Because the workplace is a key factor in improving the life chances of women, trade unions have a major role to play. Ending discrimination at work is an essential step in making the principle of equal opportunity a reality.”

Just as some workers are discriminated against or victimized by employers for being trade union members, so too women are often discriminated against because of their sex, marital status or family responsibilities. When women attempt to join unions, they may be further discriminated against by employers. In many cases, overt or direct discrimination has been replaced by indirect or more subtle forms of discrimination and victimization.

It is obvious that trade unions have a critical role to protect workers who are discriminated against on the basis of sex or, for that matter, race, colour, religion, political opinion, national extraction or social origin, disability, family responsibilities, sexual orientation or age. The role of trade unions is acknowledged in the Platform for Action of the Fourth World Conference on Women (Beijing, September 1995, paragraph 178h, p.106), which calls on governments and all social actors to recognize collective bargaining as a right and an important mechanism for the promotion of gender equality. The role of trade unions is reaffirmed in both the Beijing+5 and the Copenhagen+5 final outcome documents

The current inadequacies of equality legislation and its enforcement in many countries underscore the important role of trade unions and the potential of collective bargaining in promoting gender equality in the terms and conditions of employment. In Canada, for instance, a greater part of the collective bargaining agenda of unions seeks to strengthen and, wherever possible, expand upon legislative protections and norms

of equality. Collective bargaining provisions are also meant to provide women with more cost-effective and speedy means of using their legal rights and benefits.

Trade unions are the main force for organizing workers for social dialogue and collective bargaining. They are the vanguards of basic workers' rights, and in so far as they exist to represent and defend the rights and concerns of all members, they carry an obligatory responsibility to adequately protect and promote the interests of women in the workplace. Unions that take up gender equality issues in collective bargaining can also win public respect for their role as a major reforming force in society. And, of course, a commitment by unions to pursue the issues that are of especial concern to women in negotiations with employers would help to increase female membership.

More and more unions are addressing gender issues, including sex discrimination, as mainstream union concerns. There is also growing recognition that gender concerns are not just women's concerns. Of course, certain issues may be of more concern to women because of their reproductive role or because they specifically address the effects of past direct or indirect discrimination on women. But many gender related issues benefit men too. For example, men also need certain types of protection in regard to their reproductive function; and family-friendly policies, such as flexible working hours and parental leave, provide men with opportunities to share more in family responsibilities.

Unions should promote gender equality at the workplace because

- Women are accounting for a growing proportion of the workforce, and unions should represent and defend the rights of all workers;
- Stereotypes and misconceptions persist about the role and contributions of women workers;
- The elimination of discrimination with respect to employment and occupation and equal pay for work of equal value are basic workers' rights - and are therefore union issues;
- Collective bargaining is a critical means of improving the terms and conditions of employment and safe and healthy work environments for both women and men;
- Gender equality and women's issues have traditionally been neglected in collective bargaining;
- Women's concerns tend to be inadequately covered by labour legislation;

- Where there is equal employment opportunity legislation, unions can help to ensure that it is effectively implemented and monitored;
- Bargaining equality measures means that resolution for complaints can be accessed through the grievance procedure, a quicker and less costly process;
- Gender equality and women's issues may be non-pay issues which may be easier to negotiate with employers;
- Action on behalf of women workers would demonstrate the commitment of unions, and encourage women to join unions;
- Promoting gender equality through collective bargaining would show that unions are keeping up with the times and adapting and adjusting their goals and strategies to social concerns and the changing needs of workers

Gender equality bargaining

"We cannot rely on legislation to achieve and protect equality issues. Collective bargaining is a much more effective mechanism for ensuring that these rights exist. Bargaining equality measures also means that resolution for complaints can be accessed through the grievance procedure, a quicker and less costly process. Although there have been major achievements made in equality issues in the past, downsizing and reorganization are taking a toll, impacting on the lives of workers and women workers in particular. Therefore, it is essential that equality issues become central to collective bargaining objectives."

In many countries, the key means of action promoting gender equality in the workplace is through collective bargaining - as a process of negotiation leading to a legal written contract between workers and employers. This contract, called the collective agreement, outlines the terms and conditions of employment or any other matter of mutual interest to the workers and employer.

Relevant ILO Standards

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No.87);
- Right to Organize and to Bargain Collectively Convention, 1949 (No. 98);
- Collective Bargaining Convention, 1981 (No.154) and Recommendation, 1981 (No.163).

ILO Collective Bargaining Convention, 1981 (no. 154)

Article 2: For the purpose of this Convention the term "collective bargaining" extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other, for:

- determining working conditions and terms of employment; and/or
- regulating relations between employers and workers; and/or
- regulating relations between employers or their organizations and a workers' organization or workers' organizations.

Including gender issues in collective bargaining is a multi-phase process which requires careful planning and consideration to ensure that the efforts are fruitful and bring about desired changes in terms and conditions of employment and the more equal situation of women vis-a-vis men. Each phase corresponds to the strategies commonly used in collective bargaining, but in gender equality bargaining, the focus shifts to a more just and progressive way of representing the needs and concerns of the entire union membership. The three main phases are:

- Preparing for negotiations;
- The negotiations and
- Follow-up after the negotiations.

"The responsiveness of collective bargaining to 'women's issues' reflects the degree to which women are integrated fully into union decision-making structures, programs and activities."

Preparing for negotiations

To prepare for gender equality bargaining, unions should:

- Ensure the active participation of women, seek their views and make sure their voices are heard;
- Promote awareness and appreciation of gender issues among the union membership and also among employers;
- Select the negotiating team;
- Develop the gender equality bargaining agenda;
- Be well prepared for negotiations.

Ensure the active participation of women, seek their views and make sure their voices are heard

As with preparation for any collective bargaining negotiation, the union must identify its constituents and their interests. First and foremost, this requires the involvement of informed, educated and active members. Without the significant involvement of women it is likely that unions will lack much of the information necessary or the motivation to persuade employers to provide fair working conditions for women and for all workers with family responsibilities.

The recruitment and mobilization of members, especially women, is covered and emphasizes that before unions can champion the cause of gender equality at the workplace, they have to ensure that their own internal structures and policies are gender-sensitive and women-friendly. The links between internal equality (the position of women in the union) and external equality (in the form of good collective agreements) have been emphasized in most action research. It is especially important to raise the visibility and prominence of women's role in the union. For example, establishing a women's committee or equality committee enhances the visibility of women in the union and helps ensure that women's interests and perspectives are taken into account.

Access to educational opportunities within the union is an area where women remain at a disadvantage. The female membership must be informed of their rights as members, the various roles and positions in which they can contribute their skills and unique perspectives within the organization, the steps for formally filing workplace grievances, and the methods they can use to make their workplace concerns known to their union representatives.

Since collective bargaining is aimed at the collective rights of workers, it is clearly important to obtain the views of all workers, women and men, and to ensure that their needs and concerns are properly identified and prioritized.

Women's concerns about work are often inseparable from their domestic lives. But they may not be aware of how to translate their day-to-day problems or difficulties on the job or in combining work and family responsibilities into remedial action that can be taken by their union. Unions must therefore educate their women members in order that they fully understand the role of unions in their lives and how practically they can get their concerns into the collective bargaining agenda.

To identify what women's constraints, needs and priorities are, both

male and female union representatives must ask questions of them and listen attentively to their answers. Traditional union methods to ask members for their views may not always get results with women members. Unions should, therefore, be innovative in seeking the views of women. In preparing for negotiations, unions ought to:

Checklist:

- Recruit women members and promote their active participation in all union structures and activities;
- Ensure that all workers, especially women workers, understand and are able to make their concerns known to union representatives and know how to file workplace grievances, etc.;
- Widely publicize upcoming negotiations, for example, through sending out circulars to all workers, and provide ample time for workers to submit their views and demands;
- Conduct research: Fund the women's unit or equality unit to enable it to research women's concerns, such as tracking promotions by sex, cataloguing sexual discrimination cases, etc.;
- Send out simple questionnaires to all workers, and allow them to fill out the questionnaire in the language of their choice;
- Circulate the draft collective agreement among all workers for comments and suggestions;
- Provide specific opportunities for women workers to make their voices heard; the gender equality or women's committee, department or unit should discuss with the executive committee the formulation of demands, the gender equality or women's committee, department or unit should be able to formally submit demands for negotiations, the union should call special meetings of women representatives from all departments or units;
- Devise innovative ways of obtaining the views of those who are absent or silent at meetings, for example; get women shop stewards and those close to the women workers to explain to them the collective bargaining process and to determine their views, hold special women-only meetings, forums, study groups to give women who are less self-confident opportunities to express their views.

Promote awareness and appreciation of gender issues

Success at gender collective bargaining hinges greatly on the mutual support and activism of both women and men. All workers, female and

male, must be aware of why they should have a stake in bettering the lot of women workers. They must understand the language and meaning of the gender equality agenda for bargaining and what it means to them. It is therefore important that there is a strong educational component and advocacy materials to accompany the key bargaining proposals to help build support among the rank and file members. It is also important to promote gender awareness of employers.

Guidelines:

- Ensure that union education and training materials incorporate gender issues;
- Conduct special campaigns and motivational efforts prior to negotiations, so as to ensure that the membership buys into the gender equality bargaining proposals;
- Send out clear messages that both men and women workers have a stake in bettering the lot of women workers;
- Help promote gender awareness of employers.

“Better for women, better for all.”

Select the negotiating team

Choosing the best negotiating team is critical to ensuring success at the negotiating table. The people on the team should reflect union membership and the needs and interests of the membership. Team members should be good negotiators, with clear ideas of the interests of the workers. Strong and articulate women will always make an invaluable contribution in any negotiating team. Every organization has at least some such women.

Many unions have adopted a specific policy of including women on the negotiating team: by establishing percentage or numerical quotas or by stipulating that certain office bearers (notably the head of the equality/women's committee, department or unit or a female executive member) on the negotiation team. Such a policy of ensuring that women are always represented on the team is more effective and equitable than one of including women only when there are issues to be raised in collective bargaining that are deemed to be of particular concern to women.

However, without properly educating the female representatives about the negotiating process and negotiation techniques, their presence on the teams becomes an act of tokenism. Unions must provide education

and training for women delegates in negotiation techniques and the preparation and review of negotiation documents. Such education and training should convince the women that raising gender issues in collective bargaining is valid and important and also equip them with the information and arguments they need to be able to successfully raise gender issues in negotiations. Guidelines:

- Adopt a policy of including women on the negotiation team, so that they can play a key role in formulating demands and examining proposed clauses of the collective agreement for discrimination;
- Remember; women are used to negotiating and balancing the tight demands of family and work, many people with disabilities, minorities, gays and lesbians are used to working as activists, fighting for their rights and could make good negotiators, used to not taking 'no' for an answer;
- Do not only include women on the negotiation team when there are issues deemed to concern women;
- Educate and train women members effectively to participate in negotiations and to raise gender issues;
- Ensure that male members of the negotiating team are also sensitive to gender equality concerns;
- Remember; it could be highly effective to have a male negotiator present the case for a gender equality or women's issue.

Develop the gender equality bargaining agenda

Unions have to make serious choices in developing their collective bargaining agendas. They need to represent the interests of all their members and, importantly, to develop an agenda which best represents their bargaining goals and has the best chances of success.

The negotiating team will often be responsible for prioritizing union proposals, including gender equality proposals, for collective bargaining. At this time, it will be necessary to ensure that gender demands are not subsumed under more general, but no doubt important, union demands. The team must remember that women are not a special interest group with 'special' demands. Women are often more than half the workforce with equal rights to have their issues on the collective bargaining agenda.

"Changes at work which matter to women will only happen if the union

accepts women's priorities and does not drop them when discussing the overall collective agreement."

Sometimes, getting an item on the collective bargaining agenda may be more difficult than bargaining with the employer. The negotiating team members often have to juggle competing demands by different groups of workers, and are compelled to make difficult decisions. Female members of the union can use the same compelling arguments with the negotiating team as they expect the negotiating team to use with employers. Also, the presence of strong, vocal women on the negotiating team would help ensure that women's issues are not sidelined. Likewise, if women members know that their women representatives are 'looking out for their concerns' they are more likely to trust the team to adequately represent their interests and buy into the final collective agreement package.

In prioritizing gender equality and women's demands on the bargaining agenda remember that:

- Company policies that support women often help men too;
- Facilities that appear to most help women, for example, child care, benefit both mothers and fathers, children, families and communities;
- Proposals that benefit women have ripple effects that extend to families and communities;
- Many proposals that support the entire union membership can have direct positive benefits for women. Better pay, increased safety measures, better lighting, etc. are measures that benefit both women and men.

The draft collective agreement should be circulated to all members for their approval and support. It is important to educate and inform all members of what the provisions for gender equality or women's concerns are and what these imply. Women members might have to lobby for the acceptance of these provisions.

Be well prepared for negotiations

Unions need to be well prepared if they are to be successful in gender equality bargaining.

Gender workplace issues and women's concerns are obviously a nec-

essary component for promoting equality and social justice. However, for many business organizations concerned primarily with the financial "bottom line", this is not a convincing argument for change. Negotiators must, therefore, be ready to present data and evidence of the monetary and financial benefits of gender equality provisions. They should also carefully examine all clauses of the collective agreement to ensure that they are worded in gender-neutral language and they are not discriminatory, either explicitly or implicitly. It is also important to ensure that adequate resources are allocated and mechanisms specified within the collective agreement to allow for proper implementation and monitoring. Unions should:

Guidelines:

- Do their "homework", in particular gather all the facts and statistics on the relative position of women and men in the workplace. For example, if unions are to negotiate for equal pay, then they must have all the figures on the number of workers in different job categories and the pay differential between women and men. They should also collect information from other unions, workplaces, etc. for comparisons to substantiate their claims;
- Ensure that the overall bargaining strategy includes alliance building with equality seeking groups
- Make use of national and international information networks to gather and exchange information to prepare negotiating positions.
- Be well versed with the existing gender equality provisions and women workers' rights under current government legislation, company policies and regulations, existing contracts, work rules, collective bargaining agreements, etc.:
- Determine how collective bargaining can be used to ensure that existing rights are extended or secured. With reference to a number of areas of gender equality, a country's legislation may already provide particular rights, but these may not be applied or enforced. Unions should therefore consider how they could repeat the terms of the legislation in the collective agreements so as to help ensure more effective and accessible enforcement;
- Have arguments to show employers and male union members that promoting gender equality is not only the right thing but also the smart thing to do. The benefits of gender equality provisions in the collective agreement should be clearly explained, not merely in monetary terms,

but also with regard to such organizational factors as; a progressive and positive image for the company, more efficient use of human resources, increased productivity, higher staff morale and loyalty to the company, lower staff turnover, less absenteeism, etc.

- Identify and prioritize the demands to be submitted for negotiation. This may require an assessment of the relative costs and benefits of particular demands or collective agreement clauses. Unions may find this a useful exercise since it is more likely that an employer can be convinced to accept a proposal if it can be shown that a certain benefit is relatively cheap compared to the large tangible organizational benefits that it may bring, such as increased productivity.

Remember

In difficult economic times, unions may decide to give higher priority to non-wage, low-cost equality benefits. They may decide to push for a general equal opportunities clause, non-discrimination against workers with family responsibilities in particular in respect of promotion or advancement or for paternity leave - which would have no or little cost implications or affect a small percentage of workers, while substantially enhancing the image of the company.

Employers can benefit from gender equality bargaining

Arguments to convince employers at the bargaining table that promoting gender equality at the workplace is both the right thing and the smart thing to do:

- in terms of recruitment, equal opportunity policies would attract more qualified women to apply to work in the company;
- equitable hiring, promotion and training policies would enable a company to make the most of available human resources and increase productivity;
- flexible working time, family leave arrangements and other family friendly policies can reduce absenteeism and even staff turnover;
- provisions for safe work environments benefit both male and female workers, ensure a healthy and productive workforce and may reduce the costs of health insurance premiums as well as legal liability for accidents;
- gender equality benefits can increase an employee's organizational commitment and loyalty;

- in difficult economic times, gender equality bargaining may be easier to negotiate and less costly than other wage or monetary benefits; gender equality and non-discrimination provisions would enhance the positive and progressive image of the company - more and more companies today are proud to be able to label themselves equal opportunity employers;
- in today's global economy where consumers are more aware and sensitive to the labour conditions in which their products are produced, a company's public image would be enhanced by demonstrating a commitment to gender equality and workplace ethics.

At the negotiation table

To effectively introduce gender equality demands at the negotiation table requires the presence of active and informed female negotiators. The emphasis should be on their active participation. Unions should make efforts to establish with the management and with all the rank and file members the legitimacy of their female negotiators, as well as the validity of the gender equality demands presented.

There is a tendency to discount gender equality issues at the workplace as of low priority for collective bargaining. Since women negotiators serve as a crucial link between the women constituents of a union and their workplace, these negotiators should be assisted to adequately and effectively raise gender concerns in the negotiations. The union should organize surveys, open dialogue sessions, women-only meetings, etc. to enable the negotiators to become aware of the pertinent issues within their workplace, to compile solid evidence of the need for gender provisions within work contracts, as well as to establish the support of the union constituency for such demands. The access of the women negotiators to solidarity networks is also important - so that they have opportunities to acquire technical cooperation or assistance from other unions or equality groups, exchange information, compile data, etc.

The active support of the male leadership is also critical for establishing the legitimacy of the women negotiators. When entering a bargaining scenario, each negotiator, male and female, should be introduced to the management as equally qualified representatives of the union.

In the course of bargaining, it must be ensured that women negotiators are given an equal opportunity to speak and contribute to the proceedings. If a situation transpires in which this does not occur, female repre-

sentatives should be directly asked for their views and encouraged to contribute their perspectives. When female negotiators do present a gender issue for bargaining, other male representatives should express their complete support for the demand. A divided bargaining team is a weak bargaining team. It would be even more impressive if the male representatives could be the ones to raise the gender equality demands - and this can very easily happen if all members have been well gender sensitized.

Guidelines:

To effectively include gender issues in collective bargaining, unions should:

- Promote the active participation of women on the negotiation teams;
- Establish the legitimacy of the female negotiators and strengthen their voice at the bargaining table by ensuring that; they have been properly trained not only in negotiation techniques and procedures but also in gender equality issues, they have been able through surveys, meetings, dialogue sessions, etc. to gather evidence of the concerns of the members and their support for gender issues, they have access to solidarity networks for exchanging information and data and gathering support, the support of the male leadership is evident to the female negotiators, the management and the rank and file membership;
- Ensure that each negotiator, male and female, has equal status as a qualified representative at the bargaining table;
- Ensure that female negotiators are given ample opportunities to present their demands and make their views heard at the bargaining table;
- Ensure that any gender equality demand presented is fully supported by all members, male and female, of the negotiating team.

Remember

Divide and conquer is one of the oldest battle tactics. Do not fall for it;

- Examine collective agreements to ensure that there is no discrimination in the proposed clauses;
- As far as possible, use gender-neutral language in the collective agreement;
- Ensure that the negotiating team is equipped with the facts and arguments to convince the management of the benefits of gender equality in

the collective agreement;

- Specify in the collective agreement the resources and mechanisms for effective implementation and monitoring of the gender equality provisions;
- Do not succumb to the temptation to present gender equality concerns as subordinate to other employment issues. Gender equality bargaining can benefit both women and men alike at the workplace.

Follow-up after the negotiations

Promoting gender equality in employment does not end once the collective agreement is signed. Following up the collective bargaining process is essential, otherwise the gains for women workers might exist on paper only.

Firstly, unions and companies must ensure that employees' rights and privileges under the new agreement are widely publicized. Including gender issues in collective bargaining produces little change if workers are not aware. Such victories at the bargaining table may also be used by unions to further publicize their commitment to promoting the interests of their whole constituency, male and female. Additionally, they may be used by union organizers as a way of attracting new members.

It is essential to ensure that there are mechanisms for achieving and monitoring implementation of the agreement and for collecting and disseminating information on the impact and outcomes of the agreement in practice. Monitoring may be conducted through independent ad-hoc committees, joint ad-hoc committees, as a function of permanent equal opportunity committees, as a function of union women's committees, etc. Unions are also recognizing the benefits of joint partnerships with other local human rights and non-governmental organizations in helping to monitor workplace practices based on collective agreements or self-stated corporate codes of conduct.

The observations and statistics gathered from such monitoring committees could be used to analyse what workplace provisions need to be reviewed and revised to increase their effectiveness, as well as to identify the issues that may be of priority in the next round of negotiations.

A critical aspect is the setting up of formal grievance boards which have the adequate resources and capacity to justly and efficiently address any abrogations of the collective agreement. The grievance boards must be prepared to deal with sensitive issues such as sexual harassment, discrimination, denials of family leave, unfair dismissals,

etc. As such, formal statements ensuring the highest degree of confidentiality possible for the complainant is necessary. Without such assurances, many employees, especially women, making claims on gender provisions might be dissuaded from bringing their claims forward for fear of workplace isolation, ridicule, reprisals, etc. When informing employees of their rights under the collective agreement, they should simultaneously be informed of the proper methods of handling grievances and be assured that confidentiality will be a top priority.

Guidelines:

- Make sure the negotiated policies, rights and benefits are communicated to all workers on a regular basis (including those with non-permanent or atypical status). Such information dissemination should be through various methods: posted at the workplace, made available in lay language through the newsletters, seminars, lunchtime meetings, role play, etc.;
- Establish methods for regularly monitoring the proper implementation and the overall effects of the collectively bargained policies, rights and benefits. Ad-hoc monitoring/research committees, which include female union members could effectively work toward this end;
- Establish formal grievance and handling procedures, including grievance boards, to deal with any abrogation of the workplace contract, discrimination or sexual harassment;
- Inform all workers of the proper methods of handling grievances and assure them that their complaints will be treated confidentially and fairly;
- Increase the presence of women in the collective bargaining process through promoting their participation on monitoring committees and grievance boards. In addition, the presence of women may make it easier to bring claims related to discrimination or sexual harassment to the attention of the union and the company;
- Regularly gather statistics. Keep a close eye on the number of women and men who are hired, promoted and dismissed, as well as the numbers in all job categories, salary levels and human resource development programmes. Keep a special eye on equal pay provisions by collecting wage data;
- Always think ahead. Evaluate what workplace provisions need to be improved or reviewed to improve their effectiveness. Such issues could be introduced during the next round of collective bargaining;

- Publicize the work done by the union on behalf of women - as an organizing strategy. It is important for unions to publicize their new bargaining objectives and the strategies they have used or intend to use to achieve them.

Factors likely to influence the success or failure of gender equality bargaining

Research has identified a number of factors that are likely to encourage or discourage gender equality bargaining:

Factors relating to trade unions include:

- the extent to which women's voice is heard within the union, including women's proportion of the membership and their participation in the union;
- the extent to which women have power within the union and the extent to which those in power (men or women) have a commitment to equality;
- the importance attached to equality bargaining in the union;
- the existence and nature of the policies and structures to give this effect.

Factors relating to employers (at the company level) include:

- labour market and competitive position.;
- workforce composition (including proportion of women);
- actual or desired employer image;
- management style and culture;
- identity and role of key individuals within the organization, including matters of ownership and control

Factors relating to the nature and structure of collective bargaining within an organization:

- the extent of recognition afforded to the union by the employer;
- the quality of the bargaining relationship;
- the nature, power and discretion of the negotiators;
- the way in which bargaining agendas are constructed;
- links between equality structures in employer or union organizations on the one hand and negotiation structures on the other, and the relationship between the different bargaining agents/units.

CHAPTER 4

GENDER EQUALITY BARGAINING

The issues for gender equality bargaining

Unions are nearly unlimited in the types of issues which they might present for negotiations. Every worker, irrespective of sex, race, colour, religion, political opinion, national or social origin, age, sexual orientation, disability has the right to an equitable, fair and safe work environment as well as the right to be able to fulfil responsibilities relating to his/her personal and family life. As such, any issue which is identified as eliminating direct or indirect discrimination, promoting equality of opportunity and treatment or more effectively balancing work and family responsibilities is a legitimate issue for collective bargaining. Unions are only limited in practical terms by restrictions which are articulated through national or local legislation.

Gender equality bargaining can be seen as a powerful mechanism through which unions can either reinforce existing rights under legislation or previous collective bargaining agreements through devising practical methods of implementation, or can extend workplace rights on issues which have traditionally been ignored. Unions may strategically choose which issues they will present for negotiations. Their choice will depend on those factors which may affect their bargaining leverage and success, such as the state of the local or national economy, the current state of the labour market, the economic situation of the company, or the public image of the company. The list of issues below is not set out in any particular order.

Non-discrimination and dignity at the workplace

- trade union activities
- sex discrimination
- sexual harassment
- violence at the workplace
- equal opportunities in hiring and promotion
- equal access to education and training programmes
- affirmative action to give women a voice at all levels of the establishment

Wages and benefits

- Equal Pay
- Job classification
- Pensions
- Transport benefits
- Medical benefits
- Overtime entitlements
- Bonus systems
- Housing benefits
- Dependent allowances



Maternity protection and family responsibilities

Maternity:

- non-discrimination against pregnant women
- maternity leave and cash benefits
- job security
- reproductive health care
- leave for prenatal checkups
- rights of pregnant and nursing mothers
- adoption



Family responsibilities:

- paternity leave
- parental leave
- family leave
- child care facilities
- care of the elderly or disabled
- reproductive health services
- protection against discrimination or victimization

Hours of work

- Basic hours and overtime
- Night work
- Part-time work
- Flexible working time
- Job sharing
- Expectant and nursing mothers
- Time off for family responsibilities



Leaves of absence

- paid annual leave
- compassionate or bereavement leave
- maternity/paternity/parental leave
- medical or sick leave
- paid education or training leave
- other personal leave (for marriage, etc.)

Health, safety and the work environment

- health and environmental hazards
- ergonomics
- health and safety committees and safety representatives
- personal protective equipment
- welfare facilities and services
- disabled workers
- duty to accommodate
- reproductive health
- HIV and AIDS information
- impact of new technologies

Defending rights of non-permanent and vulnerable workers

- categories - casual, temporary, task workers, seasonal, contract, part-time, rural, homeworkers, domestic, migrant, indigenous and tribal
- extend general conditions to such workers
- eliminate child labour
- avoid non-permanent status for permanent work

Bargaining checklists for key gender equality issues

1. Ending discrimination and promoting equal opportunities.

>Sex discrimination

Just as trade unionists may be discriminated against merely for being trade unionists, some women face discrimination merely because they are women or because of their marital status or family responsibilities. Women may face discrimination in areas such as recruitment, promotion, training opportunities, dismissal and lay-offs. Sex discrimination can be overt or direct, such as limiting applications for certain jobs to only men or only women or more subtle, indirect discrimination.

Indirect discrimination is defined as "apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job".

Relevant ILO Standard

- Discrimination (Employment and Occupation) Convention, 1958 (No.111) and Recommendation, 1951 (No.111).

ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Article 1.

1. For the purpose of this Convention the term "discrimination" includes:
 - (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
 - (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.
2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
3. For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Unions can negotiate for provisions in collective agreements to protect women against direct and indirect discriminatory practices:

Checklist:

- General equal opportunities clause, expressing the commitment of the union and the employer to promoting equal opportunities

for women and men

- Opportunities for women, including those with non-permanent contracts, to apply for all positions and to benefit from training programmes;
- Non-discrimination against workers with family responsibilities, in particular with respect to promotion and advancement;
- Avoid informal systems of recruitment that often prejudice women;
- Carefully determine what training, education or past experience is actually needed for a position, as well as whether age limits or mobility requirements are absolutely essential;
- Job application forms should include only those questions relevant to the job;
- If the candidate is successful, then questions such as marital status and number of children can be asked if linked to particular benefits;
- Neutral job descriptions - if they are gender-specific, stereotypes are enforced. Women may also feel excluded;
- Gender-inclusive language in the collective agreement - if possible avoid saying 'the worker, he shall.....'. Gender-inclusive language shows a commitment to equality;
- Equality officer or women's committee to implement objectives and review progress;
- Training in equal opportunities issues for all those involved in recruitment and negotiations;
- Reversal of burden of proof - once a worker can show she/he was disadvantaged, it is for the employer to prove that it was not on the basis of sex.

The burden of proof is an important issue in the context of sex discrimination and should be discussed in negotiations. Especially since discrimination tends to be indirect, it may be important to negotiate for the reversal of the onus of proof. Once a worker can show that she/he was disadvantaged, it is for the employer to prove that it was not on the basis of sex.

Discrimination: reversing the onus of proof

In Italy a law promoting equality between the sexes and abolishing all forms of discrimination between men and women at the workplace was unanimously approved by Parliament in 1991.

A significant feature of the law is that where there is an allegation of discrimination, the onus is on the alleged discriminator to prove his or

her innocence. Charges may be brought against an employer, or other organization, without having to prove a specific instance of discrimination. All that is necessary is to provide coherent factual or statistical evidence in such areas as recruitment, pay rates, task and job assignments, transfers, promotions or dismissal showing that one sex is, directly or indirectly, more favoured by the policy than the other. The organization will then have the burden of disproving the evidence.

Reported in the Social and Labour Bulletin, Vol.2/91, and quoted in Olney et. al., 1998. Gender Equality: A Guide to Collective Bargaining. Booklet 5. Geneva: ILO.

> Equal opportunities agreement

To protect workers from both overt and more subtle forms of discrimination and victimization, unions can negotiate an equal opportunities policy and agreement. Persuading employers to adopt a general statement of intent is the first step that unions can take towards negotiating a workable equal opportunities agreement. Equal opportunities is about the right of all workers to be treated fairly regardless of their sex, race, sexual orientation, marital status or other characteristics such as age, colour, religion, disability, political or other opinion, national or social origin. It is about getting rid of discrimination and prejudice at work and in the union, and about making sure that no workers are treated unjustly.

When preparing to negotiate or review an equal opportunities agreement with employers, union negotiators may find the following questions useful:

Checklist:

- Do you have an equal opportunities agreement?
- Do all members and prospective members know about it?
- Is it published or advertised?
- Is it monitored?
- Is it reviewed by management and union representatives? If so, how and how often?
- Does it deal with job segregation, or lack of promotion for women?
- Does it commit management to take positive action where the policy is not working? If so, what positive action has been taken and is it showing results?

- Are management and employees trained on the policy? Is the training regularly updated?
- Is there a joint union/employer equal opportunities committee? Does it meet on a regular basis?
- Is there an agreed procedure for investigating complaints about recruitment, appointments and promotions?
- Can staff get paid time off to attend union training on equal opportunities?
- Does the agreement demand that all collective agreements are reviewed to eliminate any sex bias?

It may also be very useful for negotiators to bear in mind the following points about equal opportunities.

Remember

- Equal opportunity measures should have a focus which extends beyond women. Men are part of gender equality;
- Some provisions which are often taken at face value to be equal opportunity provisions, in fact, may be double-edged, with negative as well as positive potential in terms of promoting true equality.3

Example:

Enhanced maternity or child care leave for women may facilitate their continued participation in wage work, but may reinforce the premise that women have, and should continue to have, primary responsibility for childcare (and other dependent care) with a consequent intermittent (and less 'committed') attachment to the workforce than men. It would be better to have provisions targeted at men, such as paternity leave, to foster greater sharing of social responsibilities.

Example:

The existence of part-time work or other flexible work arrangements may enable workers to combine domestic responsibilities and paid work. But gender equality is unlikely to be achieved where part-time work is ghettoised into low graded 'women's jobs' or detached from a company's internal labour market and remuneration system. Negotiators need to know not simply that there is provision for part-time work but at what occupational levels such work exists, to whom it is available and

on what conditions;

'Women' and 'men' are not homogeneous categories. Differences exist in terms of ethnicity, class, age, etc. Therefore, equal opportunity provisions may be concerned with a particular group of women rather than women in general.

Equal opportunity measures

The equal opportunities policy and agreement can cover four main types of measures:

1. Barrier elimination measures to remove or change policies and practices which cause a particular sex or group of workers to be excluded from certain occupations or which limit them to a small unrepresentative number. Such measures could include:

- posting or advertising jobs in a variety of media;
- restricting testing and other selection criteria to 'bona fide' job requirements;
- fair assessment of prior learning, foreign credentials, work/volunteer experience and skills;
- leave of absence provisions to accommodate needs of all workers;
- workplace documentation, notices provided in all workers' languages and on tape for visually impaired workers

2. Positive or affirmative action measures or special efforts which are put in place over a period of time to offset imbalances due to past discrimination. These measures reflect the understanding that without temporary measures to alter past discriminatory structures, efforts to achieve equality will be unjustifiably slow, and also that economic efficiency is impaired by the under-utilization of the potential of a large segment of the workforce. There are normally four components:

- corrective action, such as setting numerical targets for women's participation in activities from which they had been excluded;
- promotional measures, designed to redress the cause of discrimination, such as giving women wider access to opportunities for vocational training and employment in non-traditional sectors;
- a time table to attain set objectives and to apply measures;
- supervisory machinery to monitor progress, assess difficulties and make the necessary adjustments.

3. Supportive measures which are similar to positive measures, except

that they also benefit all employees, whether or not they are a designated sex or group member. These measures could include:

- policies to address balancing of family and work responsibilities;
- anti-discrimination and anti-harassment policies, including provision of training and education for all workers;
- education and communication programmes to dispel myths and promote acceptance and understanding of equal opportunities;
- mentoring programmes.

4. Accommodation measures to ensure that jobs, tools and workplaces "fit" women or members of the designated group. They could include:

- work related assistive devices and access to updated and appropriate technology and software required to perform job duties;
- flexible hours, modified job duties;
- ensuring accessibility of buildings and all facilities and areas within buildings;
- accessible work areas appropriately equipped;
- dress codes which accommodate women and cultural minorities.

Source: Canadian Labour Congress. Bargaining for Equality. CLC Women's Symposium November 1-3 1998.

>Training and promotion

Women are often denied access to training and promotion which limits their ability to meet the challenges of changing technologies and to advance in their jobs.

Employers often perceive that women are more likely to leave employment because of family responsibilities and hence do not invest in upgrading their skills and fully developing their capacities. Women are also under-represented in senior positions both because of stereotyped assumptions and interrupted work histories. Without the opportunity to upgrade their skills and qualifications, women will continue to be denied the opportunity to move to higher paid jobs.

Checklist:

- Press for greater training and richer task-assignment opportunities for women, including those in non-permanent positions;
- Ensure that women workers have access to information on training opportunities;
- Make company training programmes more flexible and responsive, so

that women workers can be more adaptable and multi-skilled, rather than having traditional stereotyped vocational and sex-segregated skills. It is important that there are provisions to ensure that women are able to avail themselves of training opportunities, eg. through flexible training schedules and childcare facilities;

- Where necessary, provide reserved places for women in training and retraining opportunities, and set targets or quotas, with clear timetables, for recruitment or promotion;
- Ensure that training programmes have the following objectives; meeting the skills needs of new and growing occupations [Remember: occupations in information and communications technology], enhancing the skills of workers to cope with changes in equipment, job specification and work organization, multi-skilling to improve flexibility, retraining for workers whose jobs have been abolished or redesigned;
- Ensure that skill upgrading and job-enrichment are duly recognized in individual evaluation procedures and calculation of pay and for career progression;
- Make all selection and promotion systems transparent and establish union participation in procedures;
- Ensure that women receive credit for work-related experience and that they do not lose their seniority due to career breaks.

Relevant ILO Standard

- Human Resources Development Convention, 1975 (No.142) and Recommendation, 1975 (No.150)

ILO Human Resources Development Recommendation, 1975 (No. 150)

Promotion of Equality of Opportunity of women and Men in Training and Employment:

1. Measures should be taken to promote equality of opportunity of women and men in employment and in society as a whole.
2. These measures should form an integral part of all economic, social and cultural measures taken by governments for improving the employment situation of women and should include, as far as possible:
 - a) educating the general public and in particular parents, teachers, vocational guidance and vocational training staff, the staff of employment and other social services, employers and workers, on the need for encour-

aging women and men to play an equal part in society and in the economy and for changing traditional attitudes regarding the work of women and men in the home and in working life;

b) providing girls and women with vocational guidance on the same broad range of educational, vocational training and employment opportunities as boys and men, encouraging them to take full advantage of such opportunities and creating the conditions required for them to do so;

c) promoting equality of access for girls and women to all streams of education and to vocational training for all types of occupations, including those which have been traditionally accessible only to boys and men, subject to the provisions of international labour Conventions and Recommendations;

3. promoting further training for girls and women to ensure their personal development and advancement to skilled employment and posts of responsibility, and urging employers to provide them with the same opportunities for extending their work experience as offered to male workers with the same education and qualifications;

4. providing day-care facilities and other services for children of different ages, in so far as possible, so that girls and women with family responsibilities have access to normal vocational training, as well as making special arrangements, for instance in the form of part-time or correspondence courses, vocational training programmes following a recurrent pattern or programmes using mass media;

5. providing vocational training programmes for women above the normal age of entry into employment who wish to take up work for the first time or re-enter it after a period of absence.

>Sexual harassment

Sexual harassment is a serious, although often misunderstood, form of sex discrimination. It is also a safety and health issue at the workplace.

Legal definitions vary from country to country, but the one paramount principle is that sexual harassment refers to sexually oriented conduct which is unwanted by the recipient. The most common forms of sexual harassment at the workplace include:

- physical harassment (kissing, patting, pinching or touching in a sexual manner);
- verbal harassment (unwelcome comments about a person's sex life or private life,

- jokes and insinuations, sexually explicit conversations, suggestive comments about a person's appearance or body);
- gestural harassment (sexually suggestive gestures, such as nods, winks, gestures with the hands, fingers, legs or arms);
- written or graphic harassment (sending pornographic pictures through e-mail, putting up pin-ups or addressing unwanted love letters to an employee);
- emotional harassment (behaviour which isolates, is discriminatory towards, or excludes a person on the grounds of his or her sex).

Company definitions of sexual harassment may emphasize

- Dignity and respect: "All employees have the right to be treated with dignity and respect in a working environment free from discrimination and harassment. Any actions or behaviours which interfere with that right, and which are unwanted and offensive to the recipient, can be construed as harassment. Whether or not the harassment is intentional, it is the effect upon the recipient which is important" (Manpower Europe Brussels Inc)
- Misuse of power: "Very often, harassment is about power and harassers will pick on people who are perceived to be different, or in a minority, or who lack power themselves" (Northern Foods)
- Subjective perception: "It is up to the subjective opinion of the victim to decide whether an action constitutes sexual harassment" (Volkswagen)
- Quid pro quo harassment and action which creates a hostile working environment: "Sexual harassment is defined as any type of sexually oriented conduct, whether intentional or not, that is unwelcome and either: is implied or stated to be a term or condition of employment or a factor in evaluating the individual's job performance, eligibility for promotion or any other component of employment, or interferes directly or indirectly with an individual's work performance by creating a hostile, offensive or intimidating environment" (Katz-Media)

Men may be victims of sexual harassment, but most often it is women who suffer - because of societal attitudes and their often precarious employment position. Those in low-status jobs or with precarious employment contracts find it difficult to complain or seek support for fear of jeopardizing their job. Sometimes women who complain about being harassed are shunned, victimized or told they "cannot take a joke". Sexual harassment can result in:

- the victim leaving a job rather than face the harassment;
- biased job evaluations or poor personal recommendations;
- demotion, transfer, dismissal and loss of opportunity for training or promotion prospects and job security;
- stressful and hostile working environment that can lead to mental and physical illness for the victim and an uncomfortable atmosphere for other workers. Victims of sexual harassment suffer tension, anger, anxiety, depression, insomnia, stress-related medical problems such as headaches, digestive disorders, etc.;
- victims often suffer loss of face and social rejection, leading to family hardship and even break-up;
- the harasser (as the person who has authority or influence) jeopardizes the victim's future job opportunities by giving the victim a bad reference.

With increasing recognition that sexual harassment needs to be tackled as a labour-management issue, the problem is included on the collective bargaining agenda. Provisions in collective agreements could include measures, such as:

Checklist:

- The issuing and publicizing of strong policies against sexual harassment. Many companies now have a "zero tolerance" message:

"The Company will not tolerate, condone or allow sexual harassment, whether engaged in by fellow employees, supervisors, clients or other non-employees who conduct business with this Company. The Company encourages reporting of all incidents of sexual harassment, regardless of who the offender may be."

"We must ensure that the spirit and intent of the Company's policies are understood, and that any disrespectful language or inappropriate behaviour is not condoned. Therefore, breaches of acceptable standards will be considered as serious misconduct and will be handled in accordance with established principles of employee discipline."

- Information and education campaigns drawing attention to the various forms of sexual harassment and the fact that it will not be tolerated;
- The provision of training for all employees and management on what constitutes unacceptable behaviour. Training is often the single most important preventive measure against sexual harassment.

- The establishment of specific measures to deal appropriately with sexual harassment complaints. The complaints procedure should enable and encourage the victim to take action against the harasser. There should be rapid, thorough and confidential treatment of all complaints, and a clear disciplinary procedure concerning proven sexual harassment. Where harassment is proven, the harasser must be dealt with seriously and the victim should not be prejudiced in any way in an attempt to separate the two workers from the same working environment (eg. transferring the harasser not the complainant).

Dealing with sexual harassment: a trade union guide

1. Sexual harassment will be eradicated most effectively if there is joint employer/union action. A policy statement can be drawn up in consultation with the union and a model clause included in collective agreements and a grievance procedure established.

2. Sample clause in a collective agreement: "The union and the employer recognize the problem of sexual harassment in the workplace and are committed to ending it. Sexual harassment shall be defined as:

- unnecessary physical contact, touching or patting;
- suggestive and unwelcome remarks, jokes, comments about appearance and deliberate verbal abuse;
- leering and comprising invitations;
- use of pornographic pictures at the workplace;
- demands for sexual favours;
- physical assault.

3. Grievances under this clause will be handled with all possible speed and confidentiality. In settling the grievance, disciplinary action will be taken against employees and supervisors who engage in any activity prohibited under this clause. Every effort will be made to relocate the harasser, not the victim.

4. Grievance procedure: Grievances can be handled through the normal grievance procedure. However, unions may want to negotiate special grievance provisions to handle the unique circumstances of sexual harassment cases. Such a procedure would guarantee confidentiality and promptness and be handled by someone outside the immediate workplace on the management side.

5. Shop stewards and local officials should receive special training in the handling of sexual harassment cases. They should ensure that these are treated seriously and that they are supportive of the worker involved.

Because of the nature of sexual harassment, it is important for officials to recognize that women workers may find it easier to talk to a woman rather than a man about the problems they are experiencing. A woman steward, representative or adviser could be nominated or elected to handle complaints at the earliest stage of action.

6. The nature of sexual harassment means that in many cases it will be the word of the harasser, who is often in a more influential position, against the victim. Such cases need to be handled sensitively and in a painstaking manner.

7. When a case of sexual harassment is notified to the union representative, the representative should: encourage the worker to record details of each occurrence of harassment and monitor any changes in work patterns or attitude of the harasser; find out if other workers have experienced similar problems and ask them for details; discuss with the worker concerned how the case should be pursued; seek the support of other workers for the victim as there may be witnesses to some incidents.

8. The exact steps to be taken will depend on the nature of the case and the procedures negotiated. A resolution should be obtained which best satisfies the complainant. It should be the harasser who is transferred or, if necessary, dismissed and not the victim.

9. It is extremely important that women members are not afraid to report cases of sexual harassment and that they are given support and help once they have reported their problem. It is vital that women feel confident that their local trade union officials and their union at national level take the matter seriously and deal with it effectively.

Source: ICFTU Equality Department: Sexual harassment at work: a trade union guide

2. Wages and benefits.

>Equal pay

In the survey of trade unions, equal pay was the second most common gender matter (after maternity protection) included in collective agreements. Worldwide, women continue to earn 20-30 per cent less than men.

Relevant ILO Standard:

- Equal Remuneration Convention, 1951 (No. 100) and

ILO Equal Remuneration Convention, 1951 (No. 100)

Article 1

For the purpose of this Convention

1. the term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
2. the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex.

Article 2

Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

To bargain for equal pay for work of equal value, unions could:

Checklist:

- As a first step, gather information to establish a general picture of gender and pay. For example, the Commission of the European Communities has issued a Code of Practice on the Implementation of Equal Pay for Work of Equal Value.⁵ The code sets out a list of key indicators of potential sex bias. Unions could use this code to review their workplace to determine if:
 - Women have lower average earnings than men with the same job title;
 - Women have lower average earnings than men in the same grade;
 - Women in female-dominated jobs are paid less than the lowest male-dominated job;
 - Jobs predominantly occupied by women are graded or evaluated lower than jobs predominantly occupied by men at similar levels of effort, skill or responsibility;
 - Women are paid less than men with equivalent entry qualifications and length of service;
 - Where separate bargaining arrangements prevail within one organization, those dominated by men receive higher pay than other bargaining

groups dominated by women;

- The majority of men and women are segregated by different grading, classification and evaluation systems;
- Part-time or temporary workers, who are mainly women, have lower average hourly earnings than full-time or permanent employees in the same job or grade;
- Part-time or temporary workers, who are mainly women, have access to fewer pay and other contractual benefits;
- Different bonus arrangements, piece rate and other "payment by result" systems, apply in different areas of production, disproportionately affecting one gender;
- Different overtime rates apply in different departments, disproportionately affecting one gender;
- Holiday entitlements vary between jobs in the same grade disproportionately affecting one gender.

- Ensure that job evaluation systems are gender neutral [Section below]

>Job evaluation

Job evaluation (also called job appraisal or job assessment) is important to ensure equal pay, particularly in situations where women and men do not normally work alongside each other. Job evaluation is a comparison of the relative value of different jobs in terms of the level of demand the work makes on the average worker. The abilities of the individual workers are not measured. Where sex stereotypes are used in the process of evaluation, this can result in the undervaluation of the jobs mainly held by women. For example, traditional schemes tend to measure only the physical and mental aspects of work and do not include factors that adequately measure dexterity, caring functions, organizing or coordinating activities of people. Or where market rates are used to establish the relative weight of factors, these may simply reflect historical discrimination in the labour market.

Unions should, therefore, bargain for the use of gender neutral job evaluation criteria that define and value factors in an objective manner - taking into account only those aspects required to perform the work to the expected level of efficiency, without being influenced by feminine stereotypes or bound by traditional criteria; and that conceptualize work as having human relations skills and emotional aspects, as well as mental and physical aspects.

Gender neutral job evaluation criteria

1. Objective job evaluation criteria:

- Knowledge and skills
- Physical skills
- Mental skills
- Communication skills
- Human relation skills

2. Effort:

- Physical demands

- Mental demands

- Emotional demands

3. Responsibility (for):

- Information and material sources

- Direct supervision over other employees

- Direct responsibility for the well-being including health and safety of other people

- Planning, organisation and development

4. Working Conditions:

- Hazards - exposure, risk of injury, diseases

- Environment exposure to disagreeable working environment etc.

Source: Equity at Work: An Approach to Gender-Neutral Job Evaluation, States Services Commission, New Zealand

>Pensions

Pensions are deferred pay - pay a worker gets after he/she retires. So the right to a decent pension is important for women. It is another aspect of equal pay. The social security offered by pensions is also important because women are making up the majority of the over 60 years population in almost every country of the world. In addition, more and more women in the world today can expect to be single, separated, divorced or widowed and need a pension in their own right.

But women are often disadvantaged regarding pension schemes because:

- The types of work women are involved in often do not have pension plans;
- Many women work on a part-time basis and tend to be excluded from



employer pension plans;

- Even when they are covered by pension plans, women's lower wages result in lower pension benefits;
- More women than men have interrupted work histories due to family responsibilities or women enter the workforce later having had their families;
- Pension schemes are often designed assuming contributions based on continuous full time working life, so that those who have interrupted employment or delayed entry may not receive an adequate pension upon retirement.

Unions need to monitor and counter these trends through collective bargaining to ensure that older women workers have financial security upon retirement. They should also take into account that more and more workers are changing employment over the course of their lives. Portability of pensions is extremely important, and unions need to ensure that pensions are valued fairly at the time of transfer from one employer to another. In negotiating a pension scheme, unions should:

Checklist:

- Start off by ensuring that women receive equal pay and equal opportunities;
- Ensure that employer pension schemes are available to all employees, including part-time workers;
- Ensure that women can be given pension credits to allow for the fact that they are likely to have periods outside paid employment;
- Reduce the theoretical working life of women to allow for likely interruptions. Thus fewer but greater pension payments can be paid for women workers to ensure that women receive the same pension on retirement as their male colleagues;
- Link pension contributions to maternity leave to ensure continuity of provision (Remember, however, that this is harder with longer periods of absence and therefore not an ideal solution);
- Allow for voluntary contributions enabling workers to make up any shortfall in their pension. (But again, this is not an ideal solution as women are literally forced to pay for any interruption in their employment history).

3. Family-friendly policies

Harmonizing working life and family responsibilities is a problem for both women and men. Yet it is often women who bear the biggest burden of earning an income while still assuming the care of children and other family members and taking care of domestic chores. This double burden is acutely felt in many countries where domestic roles are perceived as entirely feminine yet the need for cash income is forcing more and more women to seek paid work. Changing economic, demographic, social and migration patterns also mean that women are increasingly becoming heads of households, solely responsible for income generation and running their homes.

Trade unions have a crucial role in easing this burden through bargaining for 'family-friendly' policies at the workplace, benefiting both men and women workers, their families and communities. There is a broad range of family-friendly measures which trade unions can include in collective agreements, such as childcare, elder care, maternity protection and benefits, family leave and alternative work schedules.

Advantages of family friendly policies

Employers benefit from:

- improved employee commitment
- improved retention of skilled workers
- increased returns on training and investments
- reduction in absenteeism and unplanned absences
- reduction in costs associated with staff attrition and workers' compensation
- improved staff morale
- improved occupational health and safety performance
- enhanced public image and competitive edge in recruiting

Employees benefit from:

- improved level of communication with family members
- enhanced career and development opportunities
- maintenance of skills
- greater focus and energy at work, along with increased motivation and job satisfaction
- increased job security arising from the knowledge that a commitment to family will not be viewed as lack of commitment to the organization
- reduction in stress as a result of flexible and more suitable working arrangements

- maintenance of physical and emotional health

Source: *Australian Public Service Division pamphlet, 1994.*

Relevant ILO Standard:

- Workers with Family Responsibilities Convention, 1981 (No.156) and Recommendation, 1981 (No. 165).

ILO Workers with Family Responsibilities Convention, 1981 (no. 156)

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.
2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

Article 2

This Convention applies to all branches of economic activity and all categories of workers.

Article 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or who wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.
2. For the purposes of paragraph 1 of this Article, the term "discrimination" means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Article 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national condi-

tions and possibilities shall be taken -

- to enable workers with family responsibilities to exercise their right to free choice of employment; and
- to take account of their needs in terms and conditions of employment and in social security.

Article 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

>Child care

Childcare is a necessity for working parents. Childcare provisions are not only about full-time daycare for pre-school children. Working parents also need care for school-age children before and after school; back-up for sick children or in emergencies; and care for children during evenings, weekends, holidays and when parents are working non-standard hours. Unions can negotiate for various options to solve these child care problems:

- day care
- creche
- after school care
- child care allowance
- holiday pay scheme
- child care information services.

Allocations or facilities may be provided by the employer, the State or in some cases co-sponsored by unions and employers. Unions are finding innovative solutions to provide child care for their members through bargaining. Childcare bargaining strategies could include:

- Resource and referral: finding high quality, reliable affordable care can be very difficult for working parents. Resource and referral services can help employees with appropriate and available child care providers, taking into consideration the special needs of each family. An employer may contract with an outside agency or handle referrals in-house. Resource and referral services also can help develop child care resources in an area if no appropriate child care exists.
- Child care tax programmes and funds: Such programmes or funds can be in the form of tax programmes, such as a dependent care assistance

plan or flexible spending account, a child care fund or a direct financial assistance arrangement.

- Providing child care (centres, networks of family day care homes and subsidized slots): Setting up a child care centre is a costly and time-consuming process. Before negotiating for a child care centre, the union needs to consider the needs of members: do they prefer in-home or centre care, what shifts do they work, are their children pre-school age? If the union decides to set up a centre, some important questions are: will the centre be profit or non-profit, will the centre be funded through employer contributions, parent fees or other sources, who will manage and operate the centre, what will child care workers in the centre be paid?
- Backup and sick child care: Backup care can be provided for mildly sick children, on days when normal care arrangements fall through or in other unusual situations. Parents of school-age children may need child care during summer vacations and on holidays. Backup care can be provided through a special programme, such as employer subsidies for in-home care or a backup centre, or by allowing parents to use their sick time to care for sick children.
- Extended hours/before and after school care: Many working parents need child care before 9am and after 5pm, including before and after school hours and during extended hours when parents are working shifts.

>Maternity protection and benefits

Maternity protection and benefits represent the gender equality issue most frequently included in collective agreements. Although pregnancy and maternity are uniquely biologically specific to women, reproduction itself is a social function which should be protected for both women and men. Pregnancy and maternity should not restrict women from their right to work and should not constitute grounds for discrimination against them. Collective bargaining should therefore ensure that:

- Statutory rights to maternity protection are observed;
- Improvements are made to the protection and benefits provided by law;
- Maternity protection is covered in the collective agreement in those countries where there are still no legal provisions.

Maternity protection and benefits should be viewed as a package including non-discrimination, job security, maternity leave, cash benefits, health protection measures and nursing breaks. Unions can bargain to ensure:

Checklist:

- All women employees receive sufficient maternity leave to ensure the recovery of the mother and development of the child;
- Any illness related to maternity will warrant extra leave as well as in the case of multiple births such as twins, or other exceptional deliveries such as caesarean delivery;
- Maternity leave does not result in decreased job security;
- The right to return to the same or similar job after maternity leave, parental or extended leave;
- No victimization or loss of job due to pregnancy;
- Prohibition of pregnancy testing for recruitment or while on the job.

Unions can use collective bargaining to also ensure that pregnant and nursing women are able to continue to work and to cope with their pregnancy and meet family responsibilities by ensuring that they have:

- The right to lighter and non-hazardous work, especially where chemicals are used or heavy weight lifted by workers manually;
- Flexible working hours so that they can avoid travelling during peak hours, particularly when public transportation is inadequate;
- Shorter working hours;
- Additional rest breaks;
- The ability to move from night work to day work;
- The right to nursing breaks without reduction in pay.

Relevant ILO Standard:

- Maternity Protection Convention, 2000 (No.183)

Unions were very active in campaigning to ensure that the standards provided for in the new ILO Convention for Maternity Protection are the best possible. The ICFTU launched a campaign "Maternity Protection 2000: It's for All of Us" in 1999: "the first step of our campaign to achieve real standards of maternity protection is to ensure that the new ILO Convention for Maternity Protection is the best standard possible"

ILO Maternity Protection Convention, 2000 (No. 183)

Scope - Article 2

This Convention applies to all employed women, including those in atypical forms of dependent work.

Health protection - Article 3

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

Maternity leave - Article 4

On production of a medical certificate or other appropriate certification as determined by national law and practice, stating the presumed date of childbirth, a women to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.

Leave in case of illness or complications - Article 5

On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.

Benefits - Article 6

Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.

Medical benefits shall be provided for the woman and her child in accordance with national law and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be indi-

vidually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement.

Employment protection and non-discrimination - Article 8

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest with the employer.

A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

Article 9

Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including - notwithstanding Article 2, paragraph 1 - access to employment.

Measures referred to in the preceding paragraph shall include a prohibition from requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment, except where required by national laws or regulations in respect of work that is:

- prohibited or restricted for pregnant or nursing women under national laws or regulations; or
- where there is a recognized or significant risk to the health of the woman and child.

Breastfeeding mothers - Article 10

A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

>Family leave

Family leave allows employees to take time off work to care for their families or recuperate from serious illnesses with a guaranteed job when they return. Unions can bargain for:

- Paternity Leave: A male worker whose spouse/partner has a baby requires time off from work to attend to the pressing family needs surrounding birth. This might entail taking the woman to and from hospital, attending to the other children during her absence, organising payment of hospital bills and giving emotional support to the new mother. The working father needs leave to deal with all these issues. The union can negotiate for paternity leave (perhaps one to two weeks). It is important that the rate of pay for such leave is considered. Rather than calculating paid leave on the basis of basic pay, average earnings (including average overtime pay) could be used. Paternity leave can be negotiated not just in the event of birth but also to cover the adoption of a child. Leave might also be given in the case of miscarriage or a stillbirth.

Recognising the important role that fathers play in family life and supporting pregnant women, the National Union of Mine Workers of South Africa negotiated an extra 4 days unpaid paternity leave to bring the total number of days to seven days in its 1994 collective agreement with employers.

- Family Leave: Family leave gives an employee the right to take time off from work to care for a newborn or newly adopted child, to care for a family member who is seriously ill or sometimes for other personal reasons.

- Parental leave (paid and unpaid): Parental leave is taken by mothers and fathers to care for newborn, newly adopted or foster care children. It is very effective in reducing turnover, training costs and absenteeism. The best parental leave language provides for paid leave, but many contracts offer unpaid leave as well.

- Part-time return to work: Many new parents want to work part-time after children are born or adopted. Unions have bargained for part-time return to work for new parents.

- Short-term leave: Working families often need the flexibility to take short periods of time off from work, such as a day or two, a half day or just a few hours. Unions can bargain contracts allowing members to take time off for various personal reasons, including school-related activities and adoption proceedings.

- Donated leave and leave banks: Some union contracts allow employees to donate their own leave directly to another employee who has used all of his or her own leave or to a leave bank. Donated leave and leave banks usually are reserved for employees experiencing serious family or personal crises.

- Expanded definition of "family": The traditional idea of "family" as composed of a mother, father and several children does not describe many of today's working families. The definition of family in leave clauses is being broadened to include many different kinds of relationships.

4. Hours of work

>Flexible working time

Flexible working time agreements allow employees to start and end work during some range of hours. Management could be persuaded to be flexible on working hours, for example, core working hours of six hours per day with flexible working hours on either side, as long as a certain number of hours are covered per week. In other cases, there is an averaging of annual hours. Working only during the school term is also becoming a trend in some countries. The benefits of flexibility for both management and workers should be identified. The union can negotiate the terms and methods of monitoring flexi-time.

Checklist:

- Bargain for flexible working hours, including the terms and methods of monitoring flexi-time;
- Ensure that management arranges the workload so that work is evenly distributed throughout the "flexible" workday;
- Negotiate compressed work weeks where employees work extra time over a certain number of days and have a day off;
- Negotiate salary deferral and personal leave plan whereby workers bank a proportion of their salary in preparation for a paid leave;
- Negotiate sabbaticals for those who require regular updating in their fields. While sabbaticals are not designed to address family responsibilities, they could be scheduled to coincide with a family event;
- Conduct educational sessions with members about work and family issues that address co-worker resentments about those working non-standard days;
- Give workers with heavy family responsibilities preference in the selection of hours.

>Part-time work with benefits

The majority of part-time workers tend to be women. For some women, part-time work is a necessity because of their family responsibilities and

the lack of dependent care facilities. But many women have no choice because there are no full-time jobs available. All too often, part-time workers are disadvantaged in terms of:

- earning lower hourly rates of pay (this is contrary to the principle of equal pay for equal work);
- ineligibility for pensions and other benefit schemes;
- ineligibility for various forms of leave;
- limited training and promotion possibilities;
- the perception that they are less committed workers, thus affecting career development.

Bargaining can be used to ensure that:

Checklist:

- There is equal treatment for part-time and full-time workers, including the same basic hourly and overtime pay rates;
- Part-time employees receive the same benefits and have the same conditions as full-time employees;
- Where benefits, such as medical care and access to welfare facilities, are not appropriate for pro-rating, part-time workers are entitled to full benefits (Transport benefits and other cash benefits which are unsuitable for systematic pro-rating may be more appropriately awarded to all workers on a needs basis);
- Part-time workers have rights with respect to lay-off, including severance pay;
- Avoid thresholds built into eligibility requirements and qualifying conditions, such as minimum number of hours worked or earnings.

Relevant ILO Standard:

- Part-time Work Convention, 1994 (No.175)

Part-time Work Convention, 1994 (No. 175)

Article 4

Measures shall be taken to ensure that part-time workers receive the same protection as that accorded to comparable full-time workers in respect of:

- the right to organize, the right to bargain collectively and the right to act as workers' representatives;
- occupational safety and health;

- discrimination in employment and occupation.

Article 5

Measures appropriate to national law and practice shall be taken to ensure that part-time workers do not, solely because they work part-time, receive a basic wage which, calculated proportionately on an hourly, performance-related, or piece-rate basis, is lower than the basic wage of comparable full-time workers, calculated according to the same method.

Article 7

Measures shall be taken to ensure that part-time workers receive conditions equivalent to those of comparable full-time workers in the fields of:

- maternity protection;
- termination of employment;
- paid annual leave and paid public holidays; and
- sick leave

It being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings.

>Other types of alternative work schedules

Alternative work schedules allow men and women to balance the responsibilities of working life and family life. Women especially may have difficulties keeping to fixed schedules because of family responsibilities. Unions can develop many creative strategies to give workers, especially women, greater control over their work lives, and bargain for a broad range of alternative work schedules:

Checklist:

- Telecommuting: is working from a site other than the central worksite, usually home. Unions have traditionally opposed telecommuting because work at home is difficult to regulate and could easily become "sweatshop" labour. Another union objection is that workers who telecommute become isolated from each other and difficult to organise. However, telecommuting can offer workers a great deal of flexibility. Women are much more likely than men to be engaged in telecommuting

Service Employees International Union Local 660 negotiated telecommuting standards for county employees under which workers telecommute voluntarily, while spending some days each week at the office. Employees working at home receive all benefits including overtime and

are eligible for workers' compensation for job-related accidents.

International Brotherhood of Electrical Workers Locals 827 and 1944 bargained with Bell Systems for a telecommuting arrangement allowing clerical staff to work from home. Bell Systems pays for telephone lines and other necessary equipment. Under the contract, the employer also compensates employees for 30 minutes of time monthly to attend union meetings and provides voice mail to allow the union to communicate with telecommuting members.

- Job sharing: is increasingly a solution for certain kinds of work to allow the combining of work and family responsibilities. Under a job-sharing arrangement, two part-time employees share one full-time job, taking responsibility for the tasks to be done. The two employees divide the full-time salary between them according to hours worked. Benefits and seniority often are pro-rated according to hours worked, although in some job-sharing situations both may receive full benefits and/or seniority. Job sharers may be in the same legal position as employees who work part-time. Unions can negotiate to ensure that:

- employee's right to enter into a job share arrangement is protected. Job sharing should be available to those who want it and at all levels of employment, not just in low-grade jobs;
- standards are established for job sharing. Job sharers should have the same conditions and access to pay and benefits as full-time workers.

- Compressed work week: Compressed work schedules allow full-time workers to work all their hours in fewer than five days per week. Common examples of this are schedules allowing workers to work four 10-hour days for an extra day off per week, or eight 9-hour days and one 8-hour day for an extra day off every two weeks.

- Making overtime voluntary: For many working families, being forced to stay at work past the regularly scheduled end time can be very stressful, particularly for working mothers who do not have backup arrangements for child care. Unions can negotiate to make overtime voluntary and thereby protect employees from this loss of power over their daily schedules.

- Shift swaps: A shift swap provision in a collective bargaining agreement allows workers to exchange shifts or workdays voluntarily to

accommodate family needs, such as attending school events or attending medical appointments.

- Voluntary reduced time: allows an employee to reduce the number of hours she or he works in a week in order to have extra time to take care of personal or family needs.

5. Health and safety of workers

Historically, occupational safety and health concerns have focussed on male dominated occupations, a practice established before the influx of women into the paid labour force. Women's work was assumed to be safe because the more obvious dangers inherent in many male occupations do not exist. However, women are exposed to health and safety hazards in the work place. For example, female industrial workers in highly competitive export-oriented industries, tend to be exposed to a range of physical safety and health problems in the work environment, as well as psychological stress. Women are also more likely than men to work in smaller establishments where occupational safety and health standards are often poor.

Unions need to negotiate health and safety processes and procedures which take women into account and which include access to information and training, workplace joint committees in which women are members, and special provisions for women who are pregnant or nursing. Relying on legislation and labour inspections is not sufficient. Unions should negotiate to ensure:

Checklist:

- Access to information regarding what chemicals or dangerous substances workers are using, and proper instructions, information, labelling and disposal procedures are provided;
- Adequate protective equipment and clothing and training on safety procedures are provided;
- Adequate ventilation and lighting are provided;
- Workers are protected from exposure to extreme temperatures;
- Noise does not exceed legally admissible levels;
- Proper ergonomic principles are adhered to regarding workstation design and working positions, including provisions for work performed seated and/or standing;

- Better designed workstations and tools and improved work organization to reduce the risk of repetitive strain injuries;
- Annual employer-paid eye examinations, especially for those working with computers;
- Separate toilet and rest room facilities for women workers;
- Special health and safety provisions to protect pregnant women and foetuses, including:
 - not assigning pregnant women to heavy manual tasks, night work or arduous tasks;
 - ensuring adequate access and space for movement around machines and equipment;
 - providing sitting facilities;
 - granting sufficient rest periods;
- possibility for pregnant or nursing women to transfer to other work where necessary.

>HIV and AIDS

"The figures speak for themselves. With an estimated 33 million persons living with HIV in 1999, two-thirds of them in Sub-Saharan Africa, and over 5 million newly infected in 1999 alone, HIV/AIDS is an immense human and social tragedy. It is also now beginning to be more widely, if belatedly understood that HIV/AIDS is a major threat to the world of work."

HIV/AIDS is:

- A threat to workers' rights: People with HIV/AIDS are subject to stigmatization, discrimination and even hostility in the community and at work;
- A threat to development: The pandemic has profound negative impacts on the economy, the workforce, the business, individual workers and their families;
- A threat to the productive workforce: Sharply rising infant and child mortality and shortened life expectancy will seriously undermine the most productive group of the population between 20 and 49 years of age. In seriously affected countries, employers hire two to three workers for training in the hope that one will not fall victim to HIV/AIDS;
- A threat to enterprise performance: The world of work is affected by increasing costs due to health care, absenteeism, burial fees, recruitment, training and retraining;
- A threat to social security: The combination of reduced contributions

and an increased outflow of funds for AIDS victims is having a huge impact on already precarious social security systems;

- A threat to gender equality: HIV/AIDS is a gender issue because women are especially vulnerable for both biological and cultural reasons. In Sub-Saharan Africa, at least 55 per cent of all infected persons are female. Young women of childbearing age especially in the ages of 15-24 are twice as likely to be infected as males in the same age group. In addition, women tend to be the central caretakers of the family and the burden is compounded by caring for an infected family member or doing without that member's financial contribution;
- A threat to child welfare: In addition to dramatically rising infant and child mortality, HIV/AIDS can also increase child labour. The tremendous pressure on households and families often forces children to work;
- A threat to the labour movement: Trade unions in some of the worst affected sectors are suffering heavy losses of their brothers and sisters.

The 17th World Congress of the ICFTU in April 2000 established a Programme of Action to address HIV/AIDS which calls for trade unions to:

- engage their respective governments and employers to support the strengthening of occupational health and safety programmes for informing and protecting groups at work, eliminate the stigma and discrimination attached to HIV/AIDS, fight the culture of denial of HIV/AIDS, help remove the cultural prejudices and barriers related to HIV/AIDS, maintain HIV/AIDS affected workers in social protection systems, and develop social and labour programmes that can mitigate the effects of HIV/AIDS;
- run preventive action programmes such as awareness raising campaigns, information dissemination activities and educational courses and seminars;
- actively support the treatment action campaign for access to low-cost, good quality essential medicines by building solidarity across national borders and initiating and facilitating these campaigns in countries where it has not yet begun;
- campaign for the provision of low-cost life saving drugs;
- campaign for the elimination of discrimination in access to insurance, medical and pension schemes for persons with HIV or AIDS;
- support efforts to address the special needs of women. Efforts must be made to overcome existing cultural barriers, ignorance and inequality, as

well as the economic burdens which are placed upon women because of HIV/AIDS.

In areas where there is a known high incidence of HIV/AIDS in the general population, unions can play an active role in providing appropriate health education to workers and their families, even where the risk is not necessarily occupational. The workplace is an excellent forum for combatting the pandemic because it unites large numbers of the age group at risk and provides an environment for people to learn about and discuss the issue. The work councils/ health and safety committees (comprising both management and workers) in many workplaces can launch HIV/AIDS awareness campaigns and educational programs. Confidential counselling services can also be provided quite effectively. A written workplace policy on HIV/AIDS should be developed.

A workplace HIV/AIDS policy should include the following:

Checklist:

- Definition and facts:
 - definition of HIV infection and AIDS;
 - Explanation of how HIV is transmitted and stages of the illness.
- Human rights:
 - Employees with HIV/AIDS have the right to fair and compassionate treatment;
 - Employees with HIV/AIDS are entitled to work as long as their condition permits and must be given reasonable accommodation regarding their schedule, duties or conditions of work;
 - Employees with HIV/AIDS have the right to equal benefit coverage.
- Safety:
 - Employers have a legal obligation to provide a safe and healthy working environment;
 - Employers shall institute universal safety procedures where exposure to blood and body fluids is likely to occur.
- Confidentiality:
 - Infected employees have the right to confidentiality concerning their medical status.
- Accommodation:
 - Employers and unions have an obligation to make reasonable accommodations to schedules, duties and conditions of work for infected employees.

- Support:
 - Employees with HIV infection shall be given information on where they can have access to counselling, support and treatment.
- Discrimination:
 - Harassment and discriminatory or stigmatizing acts against an employee with HIV infection shall not be tolerated;
 - HIV testing shall not be used in employment decisions.
- Education:
 - Ongoing education shall be provided to dispel myths about HIV/AIDS, explain the workplace care and compassion policy and human rights legislation and promote safe work practices.
- Review:
 - The employer shall regularly review and update the policy to reflect current knowledge and circumstances in the workplace.

Collective agreement covering HIV/AIDS

Agreement between the National Union of Mineworkers and the Chamber of Mines of South Africa:

Objective:

The objective of this agreement is to provide industry-level guidelines:

- to minimize the effect of HIV in the mining industry;
- to prevent the spread of HIV infection; and
- for the management of HIV infection in the employer/employee relationship.

Policy:

• General Principle: Whilst recognizing that there are circumstances unique to HIV infection, the fundamental principle to be applied is that HIV infection and AIDS should be approached on the same basis as any other serious condition.

• Rights of the individual employee:

- Rights of employees who are HIV-positive: HIV positive employees will be protected against discrimination, victimization or harassment.

- Testing: No employee should be required to undergo an HIV test at the request, or upon the initiative of management or an employee organization, provided that where HIV testing is intended in specified occupations on medical grounds.

- Employment opportunities and termination: No employee should suffer

adverse consequences, whether dismissal or denial or appropriate alternative employment opportunities which exist, merely on the basis of HIV infection.

- Counselling: Appropriate support and counselling services will be made available to employees.

- Benefits: Employees who are clinically ill or medically unfit for work will enjoy benefits in terms of the relevant conditions of employment as negotiated from time to time between the parties.

• Epidemiological testing

• Testing standards

• Awareness and education programmes:

- In the absence of vaccine or cure, information and education are vital components of an AIDS prevention programme because the spread of the disease can be limited by informed and responsible behaviour.

- Appropriate awareness and education programmes will be conducted to inform employees about AIDS and HIV which will enable them to protect themselves and others against infection by HIV

- The involvement of employees and their recognized representatives is of key importance in awareness, education and counselling programmes to prevent the spread of AIDS as well as in the support for HIV-positive employees.

- The employer will consult with employees and their recognized representatives on current and future programmes and their implementation, at mine level.

• Lifestyle changes:

- It is acknowledged that it is the role of each individual to prevent the transmission of HIV through informed and responsible behaviour and the parties also recognize that socio-economic circumstances can influence disease patterns in communities.

- The parties agree to consider at mine level the socio-economic environment and lifestyles in relation to the effective prevention of HIV infection..

• Health care workers:

- The policy recognizes the professional and ethical guidelines for health care workers as stipulated by the relevant statutory bodies.

Source: *L. N'Daba and J. Hodges-Aeberhard. 1998. HIV/AIDS and Employment. Geneva: ILO, pp.69-71.*

>Violence in the workplace

Violence in the workplace may occur between co-workers or workers may be subjected to violence from customers or clients.

Firstly, there is an increasing number of attacks on workers in general, especially in the service sectors, both public and private. Some workers are more at risk because of the nature of their work. Workers that handle money or valuables, workers that work in care giving institutions, deal with complaints or work with people in distress, those who work alone and those involved in inspecting or enforcing legislation and policies tend to be at highest risk of encountering violence. Workers in banks, post offices, retail stores, government offices, health care, social work, education, public housing and transportation are most at risk.

Women are concentrated in many of these sectors, particularly as teachers, social workers, nurses or other healthcare workers and bank and shop workers. They often bear the brunt of violence and physical and verbal abuse at work.

Secondly, violence at work, including sexual harassment, can also take the form of a power display, intimidation or abuse from a supervisor or co-worker. Violence between co-workers should be treated as a serious disciplinary (or even criminal) offence and perpetrators disciplined accordingly. Violence can be physical or emotional and include abuse, assault or threats. Particular forms of violence are harassment, bullying and mobbing. Bullying has been defined as "offensive behaviour through vindictive, cruel, malicious or humiliating attempts to undermine" an individual or groups of employees. Mobbing involves ganging up on an employee and subjecting her or him to psychological harassment and may include constant criticism or ridicule or spreading false information about that person.

Women are more vulnerable to such violence, due to their position in the labour market. The continued segregation of women in low-paid and low-status jobs, while men predominate in better-paid, authoritative and supervisory positions contributes to the problem.

Women migrants are particularly at risk. Domestic workers who are often migrant workers, suffer gross mistreatment including physical and sexual abuse and forced labour. These women are doubly vulnerable because of their gender and their being foreigners and often working illegally.

Protecting employees from violence and sexual harassment is a fundamental responsibility of employers and should be seen as a main-

stream health and safety issue. In many countries, incidents involving violence at work fall outside the scope of reporting requirements for accidents at work and other health and safety requirements. Often, employers do not have in place appropriate mechanisms and procedures to deal effectively with the problem of violence to their employees. Unions and employers should together develop and put into practice policies and procedures for reporting, investigating and dealing with violence. These should be evaluated and monitored.

Model collective agreement provisions on violence at work

- Definition of violence: Violence shall be defined as any incident in which an employee is abused, threatened or assaulted during the course of his/her employment. This includes the application of force, threats with or without weapons, severe verbal abuse and persistent sexual and racial harassment.
- Violence policies and procedures: The employer agrees to develop explicit policies and procedures to deal with violence. The policy will address the prevention of violence, the management of violent situations and the provision of legal counsel and support to employees who have faced violence. The policies and procedures shall be part of the employer's health and safety policy and written copies shall be provided to each employee.
- Measures and procedures to prevent violence to employees: The employer agrees that, in all cases where employees or the union identify a risk of violence to staff, the employer shall establish and maintain measures and procedures to reduce the likelihood of incidents to the lowest possible level. It is understood that the measures and procedures are in addition to and not a replacement for a training programme about dealing with violence. In developing measures and procedures to prevent violence, priority will be given to options such as job redesign, adequate staffing levels and improving the working environment, before considering the need for personal protection or alarms.
- Function of workplace union-employer health and safety committee: All incidents involving aggression or violence shall be brought to the attention of the health and safety committee. The employer agrees that the health and safety committee shall concern itself with all matters relating to violence to staff, including but not limited to:
 - developing violence policies;
 - developing measures and procedures to prevent violence to staff;

- receiving and reviewing reports of violent incidents; and
- developing and implementing violence training programmes. Where no union-employer health and safety committee has been established, the employer agrees to consult with the union.
- Staffing levels to deal with potential violence: The employer agrees that, where there is a risk of violence, an adequate level of trained employees must be present. The employer recognizes that workloads can lead to fatigue and a diminished ability both to identify and to subsequently deal with a potentially violent situation.

Source: CUPE Health and Safety Department, 1994: Violence at Work Campaign.

Collective agreements on violence at work

- In Norway, the basic agreement of 1994 between the Norwegian Confederation of Trade Unions (LO) and the Confederation of Norwegian Business and Industry establishes the express right for workers to refuse to work with persons who have exhibited such improper conduct:

"Employees have the right to refuse to work with, or under the management of, persons who have shown such improper conduct that, according to the norms of working or social life generally, it ought to justify their dismissal. Discussions between employers and shop stewards should be held immediately if such situations arise. If they fail to reach agreement, there shall not be any stoppage or other forms of industrial action."

- In the United Kingdom, UNISON has developed a Model Agreement on Tackling Violence in the National Health Service. The development and implementation of policies to tackle violence must be the subject of negotiation and agreed at all stages between management and trade union representatives. Full use must be made of the safety and representatives and safety committees. This must include adequate information and opportunities for additional union-approved training for safety representatives; adequate arrangements to investigate cases of violence and assault; and provision for safety committees to review the effectiveness of anti-violence policies.
- The Manufacturing, Science and Finance Union (MSF) in the United Kingdom has published a Guide to Prevention of Violence at Work, which stresses that a successful strategy in this area can only be

achieved if employees are fully involved in its development. The employer must consult fully with safety representatives over the strategy, and over the planning and organization of any training provided as part of that strategy.

Source: *D. Chappell and V. Di Martino, 1998. Violence at work. Geneva: ILO, pp.96-98.*



CHAPTER 5

ORGANIZING THE UNORGANIZED: INFORMAL SECTOR AND OTHER VULNERABLE WORKERS

The challenge of the informal sector for trade unions

"Today the reality of a restructured and fragmented economy and the individualisation of employment relationships make trade union organising more difficult. Organising does not mean just recruiting new members in the workplace and providing them with services. It is equally about connecting with current members, potential members and other groups in society who share less and less a commonality of interests in order to build a strong social movement. Organising therefore means that unions need to refocus on workers, regardless of their employment status or link to a particular workplace."

"Organising the informal sector should be a priority for unions because the formal sector is declining; it is therefore a question of survival - unions need to increase membership. Strategies are needed to defend and promote the rights of the ever-growing number of informal sector workers - the majority of whom are women - and to get them to become members of and fully integrated into the trade unions."

One of the greatest challenges facing trade unions today is the growth of the informal sector. The term "informal sector" has been used widely to refer to that segment of the economy and labour market which consists of "units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned. These units typically operate at a low level of organisation, with little or no division between labour and capital as factors of production and on a small scale. Labour relations - where they exist - are based mostly on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees".³ These units tend to have a number of features in common: low levels of capital, skills, access to organised markets and technology; low and unstable incomes and poor working conditions; outside the scope of official statistical enumeration and government regulations; and beyond formal systems of labour and social protection.

The growth of informal sector activities 4 can be attributed to a lack of, or decline in economic growth, to jobless growth, to barriers and constraints on workers' access to the formal job market, to impoverishment and household survival strategies, but also in a positive vein, to people's own entrepreneurial and creative initiatives. National policy reforms and global developments in recent years have contributed to the expansion of the informal sector. For example, structural adjustment programmes in most developing countries have slowed down aggregate demand, cut back public sector employment and severely contracted employment in the formal sector. Processes of trade liberalisation and globalisation have prompted the adoption of new production systems, involving the decentralization of production through outsourcing and sub-contracting and the increased use of more flexible employment arrangements.

Decentralized production and labour processes have been made possible by new technologies. Increasing numbers of jobs are outsourced or subcontracted by formal sector firms to smaller enterprises, household-based production units and homeworkers in the informal sector. This is happening in both advanced and developing countries, and across national boundaries.

Because of these changes, the line between formal and informal activities is increasingly blurred. First, production units often operate in a realm between the "underground" and activities which fully comply with legal requirements. The typical situation is one of partial compliance. Second, some formal enterprises may also use informal employment arrangements, out-source work to micro enterprises in the informal sector, or use homebased workers at the bottom of their production chains.

The different production and employment arrangements that prevail in the informal sector mean that it is made up of different groups of actors and workers. The informal sector workforce could be categorized into three main groups:

- owner-employers of micro enterprises, which employ a few paid workers, with or without apprentices;
- own-account workers, which own and operate one-person businesses, who work alone or with the help of unpaid workers, generally family members and apprentices; and
- dependent workers, paid or unpaid, including wage workers in micro enterprises, unpaid family workers, apprentices, contract labour, home workers and paid domestic workers.

Although not a homogenous group, the common bond of informal sector workers is that they are usually low paid, low status, and their employment is non-standard or "atypical" characterized by precariousness and vulnerability. They normally have little job, employment or income security, are vulnerable to abuses of workers' rights, and are often beyond the scope of legal and social protection.

Women are much more likely than men to be in the informal sector. In developing countries, the majority of economically active women work in the informal sector.

The heterogeneity of the workforce and employment relationships in the informal sector poses a number of challenges to unions attempting to organize and represent such workers because:

- Such workers do not represent a uniform group and may have obvious differences of interests;
- They may not share common interests with the bulk of current union members. For example, ethnic, family and kinship ties may be stronger among such workers than working class solidarity;
- They are hard for unions to contact and to mobilize - organizing drives can be costly and difficult and time and resource consuming;
- They are often so caught up in the daily struggle for survival that they are not inclined to join in collective action, especially since they cannot see how such action or membership in a union can help them solve their practical problems and basic needs;
- The highly precarious nature of their work means that they are often too worried about losing their jobs to join a union;
- They are often not covered by existing labour legislation;
- Unions may find that it is hard to retain such workers as members because of the precariousness of their employment, and may, therefore, consider that it is not an efficient use of their human and financial resources to try to organize such workers;
- Many unions do not have tested strategies for organizing them;
- Current union members may not see the rationale for organizing such workers and may object to the necessary changes in policies and resource allocation required to reach out to such workers.

Organizing the unorganized can clearly be risky because the return on the human and financial investment required is uncertain. Moreover, it requires a long-term commitment and may imply re-evaluating the per-

ception which trade unions have of their "base" as well as the way they operate. The challenge is for the unions to reach out to new groups without undermining their traditional support base.

In spite of these challenges, more and more unions are recognizing the importance of organizing informal sector workers - not only in the workers' interests but also for strengthening the trade union movement as a whole. Women trade unionists have played a leading role in bringing up informal sector issues and pressing for the definition of a clear trade union position on these issues. Unions should defend the rights of these informal sector workers, some of whom were their members when they had formal sector or more permanent jobs. It is also to the union's advantage to improve their conditions so that union members with secure employment do not find their conditions of work under threat or eroded due to competition from non-organized workers. And where unions have done so, the results have generally been encouraging.

"When a large sector of the workforce is in the informal sector and not covered by the unions, governments and employers organizations are not slow to accuse them of not being a valid social partner because they only represent a minority of workers. Usually there is no alternative social partner, however. The rights won after long years of trade union struggle may simply evaporate."

Organizing informal sector workers

It is obviously important to distinguish between different types of informal sector workers and also other types of workers vulnerable to exploitation and poor working conditions, and to develop organization strategies to meet their various needs. Subsequent sections in this booklet will focus on specific groups and will highlight measures particularly relevant for each. However, there are some general guidelines for organizing and protecting informal sector and other vulnerable workers:

- special outreach;
- awareness raising and education campaigns;
- changes in union statutes and internal structures;
- special services for informal sector workers;
- inclusion in collective bargaining agreements;
- assistance to form own associations/unions and alliances and coalition building.

Special outreach

One of the most difficult challenges is to reach informal sector workers. Some workers are homebased, others are scattered over small production units that are often invisible and hard to locate and contact. In practice, this means going out and looking for them:

Guidelines:

- Keep track of unions members. In today's labour markets, workers are very likely to change jobs, employment, work status or workplace or become unemployed several times over their working life. Therefore, it is very important for unions to not lose touch with its members;
- Make access to information about the location of workers and details of 'contracting out' a priority. Unions should establish mechanisms to systematically collect information that tracks the contracting out process and the flow of work along the production chain from the point of sale of the final product or service down to the basic unit of production. This information can be used by unions to identify potential members and also for media campaigns about the exploitation of contract workers and homeworkers;
- Use a community-based approach in conjunction with other proven 'shop-floor' organizing methods. With many types of atypical workers, their uncertain hours of work and their dispersed workplaces mean that the main point of access to them may be at the community level. This means working intensively in particular communities and linking with community organizations who have contacts with these workers. Building alliances with like-minded organizations and movements can be an important way of spreading trade union ideals and raising the trade union profile. Community-level women's groups and NGOs can be very useful allies, both for establishing contacts with atypical workers and for joint action on a range of social and human rights issues. Some unions have also established community centres to provide advice, counselling and training services and thereby attract such workers;
- Build 'bridges' between the trade union movement and informal sector workers. For example, trade union members who are employed in the formal sector but who have relatives or friends in the informal sector can serve as the link between the union and the workers concerned. The union experience of members and activists who have been forced out of the formal sector into atypical work should be capitalized on;
- Promote the 'organizing model' of trade union organization in order to

empower workers to find solutions to their problems. This approach devotes particular attention to empowering rank and file members to do the work of organizing their co-workers

- Take care to ensure that the places and times of activities to reach out to informal sector workers suit their heavy and uncertain work schedules. Often this may mean holding evening sessions or on Sunday afternoons, and it may also mean organizing informal child care where necessary.

Awareness raising and education campaigns

Once contact is made, unions need to motivate atypical workers through:

Guidelines:

- Awareness raising campaigns that focus not only on their legal rights but also, and very importantly, on the benefits of unionization. Especially since the most important reason why women do not join unions is that they do not understand how unions can help them, such sensitization activities are crucial. A comprehensive communications strategy is crucial; awareness raising campaigns and rallies, radio and television or announcements, street theatre, musical performances may be more effective than print media to transmit information to informal sector workers, especially women;
- Widely publicize union successes in improving the position of such workers;
- Use innovative ways of educating and mobilizing workers, bearing in mind that in some types of atypical work, women may have a low level of education and literacy. Trade unions in some African countries have indicated that alternative communication tools such as role playing, drama and songs are particularly effective communication tools within education programmes addressing women.
- Implement comprehensive education programmes, with the aim of developing real leadership potential among atypical and informal sector workers. A holistic education approach appears to work best - covering normal union issues such as collective bargaining and also other issues addressing the specific needs of such workers, such as legal literacy, how to apply for loans, etc.
- Consider the choice of education techniques to use in dealing with informal sector workers. One didactic method that has proved success-

ful is study circles. Trade unions use study circles to enable informal sector workers to acquire skills in organizing training sessions and meetings, and this method has helped to build mutual respect, dialogue and unity among workers

- Participatory methods are also important. For example, soliciting the views of atypical women workers and listening to their concerns in women-only forums where they can express themselves freely can be a more effective strategy than merely informing them of their rights.

Changes in union statutes and internal structures

Some unions may not have the constitutional provisions and mandate to organise atypical workers. Changes in union constitutions and internal restructuring are often required to enable recruitment of workers outside the formal sector.

Guidelines:

- Amend the union constitution or statutes to include atypical and informal sector workers. Such amendments may cover not only the right to membership, participation in negotiating teams, coverage in collective agreements but also, in many cases, the provision of special services. For example, to open up union membership to atypical workers unions could adjust subscription rates according to earnings of different types of workers. Unions can also adopt a policy not to differentiate between workers with different work patterns. They could change their rules on mutual health schemes and cooperatives to allow atypical workers to become members;
- Conduct union campaigns directed at government to reform labour legislation or extend the scope of coverage to atypical and informal sector workers. Since there are often legal barriers, changes in labour legislation are necessary before unions can adequately represent atypical workers or include them in collective agreements. The union movement can play an important role in advocacy and lobbying of governments on this issue;
- To more effectively mobilize and organize atypical workers, unions may need to change their internal structures, including creating special departments or units and having specific budget allocations.
- Women's sections in trade unions can also play a critical role in reaching out to atypical and informal sector workers. They can develop services that are relevant to women workers in atypical forms of work, for

example targeting young women who make up the bulk of new entrants into the labour market by assisting them to find jobs and offering workshops on issues such as sexual harassment and adjustment to working life.

- Funding is a critical issue for campaigns targeting workers outside full time formal work, and international trade unions can play an important role in assisting resource-strapped trade unions in the developing world.

Special services for informal sector workers

Interest representation, lobbying, advocacy and collective action remain at the heart of trade union activities. But to make themselves more relevant to the lives of atypical and informal sector workers, unions can provide or extend the range of "special" services as a tool to address the immediate economic and social needs of these workers and as a recruitment strategy. "These services should not be regarded as a substitute for collective bargaining nor as a way to absolve governments from their responsibilities. Rather, the special services should be seen as a complementary organizing activity aimed at improving trade unions' leadership role in society and helping to raise their profile in civil society".

Such special services can be:

- establishing job placement centres, telephone helplines to assist such workers in job search or employment related problems;
- helping such workers to regularize their employment status;
- assistance to deal with bureaucracies, for example, assisting informal sector women to deal with banks, creditors and local authorities to obtain licenses, subsidies, market places, and so forth;
- setting up of cooperatives: The organization of cooperatives is often a first step towards unionization. Cooperatives generally pursue both economic and social objectives and have proven to be successful in both empowering women and increasing their awareness of the benefits of unionization. "The big advantage of being a member of a trade union-cum-cooperative organization is that a casualized worker begins to perceive herself gradually as a proper 'worker' entitled to rights similar to those that the State offers to workers of the organized sector"
- facilities for atypical workers, including medical insurance, health funds, unemployment benefits, educational grants, loans, community-based childcare facilities, etc.;
- providing training for such workers, such as in legal literacy, occupational safety and health issues, family planning, etc.

Inclusion in collective bargaining agreements

An important aim is for unions to include atypical workers in collective agreements. There can be two basic approaches:

- Extension of collective agreements to cover atypical workers, so as to overcome some of the disadvantages suffered by such workers, such as exclusion from statutory benefits, unequal pay or lack of employment security.
- Bargain for the regularization of the employment status of atypical workers, so as to bring them closer to 'core' union members.

Assistance to form own associations/unions and alliances and coalition building

Trade unions have different options for organizing atypical and informal sector workers. Whatever option is decided upon should have the clear endorsement of current union members. These options are:

Guidelines:

- Amend the trade union constitution or statutes to include atypical or informal sector workers as direct members. This means the union will have to widen its interpretation of the traditional trade union 'base' to include a broad spectrum of workers, regardless of their employment status. To broaden its organizational base through an expansion of membership, the union would have to consider:
 - how such workers should be integrated into existing union structures. For example, should such workers be able to play their part in the management structure on the same basis as other members?
 - whether such workers should pay regular membership fees. Since for many such vulnerable workers the fees may be a constraint, the union should find alternative solutions, such as setting lower rates or offering a 'grace period'.
- Help atypical or informal sector workers to establish their own union-type associations and forge close relations with them. Where there are major constraints to directly recruiting atypical workers as members, it may be more effective in the short term to provide guidance, training and other supports to enhance the capacity of such workers to organize themselves. The unions could then form close partnerships or affiliations with these self-organized groups. This kind of initiative can be instrumental in developing mutual trust and in overcoming reservations that

atypical workers may have in joining existing unions. The related issues to consider are:

- If these atypical or informal sector workers set up their own union, how should the new union be formally affiliated to the existing national union structure?
- If they establish other types of associations that are not formally affiliated to the national union structure, how can the existing trade unions forge linkages and close alliances with them?
- The importance of lobbying on behalf of these informal sector organizations and fighting for their recognition. Informal sector workers often organize with the help of unions or NGOs but after the initial stages, they face difficulties of sustaining and developing their organizations. A major problem is that these organizations usually remain unrecognized by those with whom they need to negotiate - public authorities, contractors, employers, etc. Established trade unions have a critical role to play to assist these organizations to achieve recognition, bargaining power and legal protection.
- Build coalitions with appropriate informal sector unions and organizations which already exist and which share the basic principles and objectives of the trade union movement. These groups can provide opportunities for organizational partnerships or integration with existing trade union centres.
- Retain union identity as organizations of workers acting in defence and promotion of their interests, and, on this basis, build more general alliances with NGOs, religious groups and other civil society groups as one component of the overall campaign to organize and improve conditions for informal sector workers. Issues-based alliances can be an effective measure.

Part-time workers

Part-time work with benefits. Part-time employment has been expanding relative to full-time employment. Women represent the majority of part-time workers, accounting for 80 per cent or more in several Western European countries. A key issue that unions should consider is whether part-time work is a "bridge" or a "trap" in terms of labour market participation.

Part-time work is a "bridge" when it facilitates gradual entry into, participation in or retirement from the labour market; and can be particularly important in offering women an effective way to divide their time

between paid work, household responsibilities and child rearing. However, it can also be a marginalized form of cheap labour that entraps workers in precarious employment. This is especially the case where women go into part-time work because no full-time jobs are available and where missing out on training and promotion pushes these workers into a peripheral labour market in terms of qualifications and income, or lower lifetime accumulation of pension entitlements.

It is useful to distinguish three main categories of part-time work:

- contingent participants to the labour market who are not seen as prime or independent income earners. In many countries, such part-timers have restricted rights to unemployment benefits, pensions and/or sick pay, particularly when they fail to meet earnings or hours thresholds or when combining work with other activities such as education and caring;
- continuous participants working reduced hours temporarily and voluntarily. This category consists mainly of women who reduce hours of work over the period of childbirth and child-rearing while remaining permanent participants in the labour market. The right to work part-time is seen as a privilege. The employer or the State does not compensate for the gap in income between full and reduced hours;
- part-time work for full-time continuous participants in the labour market. This may refer, for instance, to short-time work with earnings compensation to avoid redundancy, but is usually targeted at male manual workers. There are very few situations where women would receive compensation for hours not actually worked.

To organize part-time workers, some specific guidelines are:

- Negotiate for permanent status for workers who are hired on a continuous basis or in a job that is not temporary in nature;
- Extend the general conditions (pay, benefits, leave, rights with respect to termination of employment) of full-time workers to part-time workers to the greatest extent possible;
- Avoid thresholds built into eligibility requirements and qualifying conditions, such as minimum number of hours worked or earnings;
- Ensure that training opportunities are open to part-time workers so that they can improve their employment status and enrich their jobs;
- Assume that there is no community of interests between the core workforce and part-time workers - they are, in fact, doing similar work.

Homeworkers

Especially as a consequence of developments in information and communications technology, home-based work has been expanding. Homebased workers are in an extraordinary diversity of occupations, payment systems and contractual arrangements, in a wide range of service and manufacturing industries. Industrial-type homework covers the traditional sectors such as textiles and clothing and also newer activities such as sorting, cleaning, packaging and labelling of high-technology manufacturing and electrical, plastic and light metal goods. Such work is labour-intensive and is often contracted out on a piecework basis. Homework in the service sector is also expanding, especially in teleworking and "back offices" for word and data processing, invoicing, editing and translating.

Women account for 70 to 80 per cent of home workers in both developed and developing countries; they make up an "invisible" and "captive" workforce, often tied to the home because of family responsibilities. Homeworkers may also be migrant or ethnic minority women who are unable to find work outside their homes, because of discrimination or prejudices against migrants or barriers such as lack of knowledge of the host country's language.

Homeworking generally involves low pay, invisibility, long hours and poor working conditions. Compared with in-factory workers, who produce goods of the same quality and quantity, homeworkers are paid considerably less. Most have no networks or other organizational basis for bargaining or comparing the current wage rates. They are subject to insecurity of work availability, receiving income only when work is available. There is also the danger that homebased workers may use their children as part of the family labour force and withdraw them from school. Health and safety conditions may be poor in the home. Access to social benefits and protection is also a problem, since homeworkers normally are not covered by the national labour legislation.

Homeworkers were traditionally seen as "outlaws or scab labour" by the unions, so that the early response was to advocate a total ban of homework. But now many unions have moved towards organizing such workers. Instead of blaming homeworkers for the growth of homework, many unions have tried to understand the reasons why women take up home-

work and to help these women. Union can:

Checklist:

- Establish contact with homeworkers. Conventional methods may not be effective. Unions may need to:
 - work intensively in some communities with community organizations, including migrant community organizations, to contact such workers at their homes;
 - organize special events which allow homeworkers to come out of their isolation, come into contact with each other, make factory visits, etc.;
 - establish a telephone hotline or free inquiry line so that homeworkers have a contact point where they can seek advice;
 - set up information or support centres at the community level;
- Collect information about homeworking, once contact has been established. Since most homework is invisible, information can be collected only through contact with the workers themselves;
- Publicize the information, carry out campaigns to make homework visible and to generate support for activities to improve the situation of homeworkers;
- Lobby for legal reform for homework. Especially where homeworkers are not covered by labour legislation, such reform is a pre-condition for improving their situation. It is important to lobby for recognition of the "employee status" of homeworkers since this enables them to have the same rights and to be covered by the same awards as in-factory workers in the same industry, rather than being treated as "independent contractors".
- Organize the homeworkers - either by recruiting them directly as members of the union (eg. through keeping membership dues low enough to be accessible to homeworkers) or by encouraging them to set up their own associations that are affiliated with the union;
- Include homeworkers in the terms of the collective agreement.

Home Work Convention, 1996 (No.177)

Article 1

For the purposes of this Convention:

- the term home work means work carried out by a person, to be referred to as a homeworker,
- in his or her home or in other premises of his or her choice, other than

the workplace of the employer;

- for remuneration;
- which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

Article 4

- The national policy on home work shall promote, as far as possible, equality of treatment between homeworkers and other wage earners, taking into account the special characteristics of home work and, where appropriate, conditions applicable to the same or a similar type of work carried out in an enterprise.
- Equality of treatment shall be promoted, in particular, in relation to:
 - the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
 - protection against discrimination in employment and occupation;
 - protection in the field of occupational safety and health;
 - remuneration;
 - statutory social security protection;
 - access to training;
 - minimum age for admission to employment or work; and
 - maternity protection.

Domestic workers

One of the most hidden forms of work is domestic service. Isolated in individualized situations in other people's homes, the labour of domestic workers goes unrecognized, unseen, undervalued and not covered by a country's labour inspection system. There are no proper job descriptions for domestic work and no recognition of necessary skills or qualifications. Since the majority of domestic workers are migrants from rural areas or even other countries, they stay in the employers' home where they are often expected to be on demand for any chore at any time of day or night, and are trapped by the employers' argument that since they are housed and fed they need only a minimum wage. Domestic work is normally characterized by low wages, excessive hours of work with no extra pay, overwork, lack of benefits or social security, unfair termination of employment and employer abuse. Sexual harassment of domestic

workers is a common complaint.

As early as 1965, the International Labour Conference adopted a Resolution which considered it an "urgent need to provide for domestic workers in all member countries the basic elements of protection which would assure them a minimum standard of living, compatible with the self-respect and human dignity which are essential to social justice". In 1967, on the basis of a worldwide survey, the ILO concluded that domestic workers the world over were underpaid and unprotected. The Report of the Committee of Experts stated that "it would be unadvisable from the standpoint of social policy to ignore the problem of domestic workers and permit this sector to remain a forgotten one".

The most vulnerable domestic workers tend to be women who are migrants and especially illegal migrants from other countries. Many migrant women, because they cannot find other jobs, work as domestics. Asian women - from the Philippines, Thailand, Indonesia and Sri Lanka - have been heavily involved in international contract migration to work as domestics in developed countries. Their vulnerability to exploitation by unscrupulous employment agents in both sending and receiving countries and by employers is well-known.

Most domestic workers tend to be young and unmarried, to be from rural areas, and in many countries include child workers. Child labour in domestic service has been identified as one of the worst forms of child labour under the ILO Convention on the Worst Forms of Child Labour, 1999 (No.182).

Unions in several countries have successfully organized domestic workers and defended their rights. Organizing is essential to obtain protection for domestic workers through legislation, to inform the public of their conditions, and to provide them with an understanding of their rights as workers and a sense of dignity in their occupation. In the case of child domestic workers, unions have been supporting the ILO International Programme on the Elimination of Child Labour (IPEC) efforts to work towards the elimination of this hazardous form of child labour.

Guidelines:

- Organizing domestic workers who are isolated by the nature of their work and who may have no awareness of belonging to a specific labour group is an obvious challenge but can be tackled by:
 - Working with other civil groups - women's associations, religious

groups, social assistance organizations, NGOs - to encourage and assist domestic workers to come together to form their own associations (Many of the most active organizers of unions for domestic workers have been domestic workers themselves).

- Providing special services for domestic workers, including employment exchanges, telephone support networks, a place to congregate on days off, counselling and advisory services (both legal and general advice).
- Ensuring that domestic workers can easily contact the union.
- Ensuring that domestic workers can easily contact the union.
- Conducting publicity and media campaigns to make domestic workers aware of their rights and to sensitize the public to the exploitation of such workers.
- It is crucial to lobby for national legislation to cover domestic workers. Unless domestic workers are officially recognized as employees, they would be excluded from the operation of labour laws and would not be able to use the services of labour administration or the industrial court to resolve disputes.
- Assist domestic workers to lobby for legislation to improve their terms and conditions of work, including:
 - stipulated hours of work;
 - a minimum wage, adequate to support basic living needs, with extra pay for skilled work such as childcare, taking care of the elderly and persons with disabilities, when in addition to housework;
 - additional pay for sleep-in domestics;
 - severance benefits;
 - sick leave, vacation pay and public holidays;
 - overtime pay;
 - maternity protection;
 - prevention, prosecution and compensation for sexual harassment and wrongful dismissal;
 - a requirement that employers enter into written contracts with domestic workers;
 - prevention, prohibition and abolishment of child labour in domestic work.
- A legal requirement that domestic workers have written contracts would help ensure their terms and conditions of work.
- Raise awareness of the link between unpaid domestic work and the low status of paid domestic work. Unpaid domestic work should be recognized as work and an accurate measure of the quantity and econom-

ic value of this work should be included in a country's gross domestic product using satellite accounts.

- Provide training for domestic workers. Different types of training are required:

- to improve their skill levels and standard of work through in-class and practical training and provide certification as a means of increasing their wages;
- to help raise their self confidence and the dignity of their work;
- to expose them to skills other than those related to domestic work so as to enhance their employment options.

Migrant workers

There are more than 120 million migrants around the world. Migrant workers are an increasingly important target group for union organizing drives. In the United States, for instance, the AFL-CIO recently announced a new initiative to bring respect and dignity to immigrant workers. "All workers - immigrant, native-born, documented or undocumented - should have the full protection of our system of workplace rights and freedoms". The AFL-CIO Executive Council called for major reforms in the US immigration laws which routinely are used to punish workers, and also for the creation of education programmes and training centres to educate workers about immigration issues and assist workers in exercising their rights and freedoms.

In permanent immigration countries, migrant women tend to be disproportionately represented in under- and un-employment. They may have inadequate education and training or their qualifications may not be recognised by the host country. Often they have inadequate command of the host language and may be subject to discrimination of grounds of nationality, colour, race, ethnic origin. Wives of immigrant male workers tend to be at a disadvantage, because they are cut off from networks of social support and information, do not have access to education and training facilities, may not have the right to work, etc. Many of these women then end up working illegally in 'sweatshops' for unscrupulous employers.

In the past, women moved as part of family migration. But increasingly, women are involved in temporary labour migration; they are migrating independently for overseas employment. However, the temporary female labour migrants tend to go into a very limited range of female-dominated occupations - often described as the '3D (dirty, dangerous

and difficult) jobs': as domestic helpers, entertainers, helpers in restaurants and hotels, sales girls and assembly line workers in labour-intensive manufacturing.

Because of their marginalised and often illegal status, migrant women tend to be subject to exploitation by unscrupulous employment agencies and employers. In both sending and receiving countries, there have been countless cases of women cheated by recruitment agents promising fictitious jobs for a fee, withholding information or providing false information on the nature of the job and the conditions of employment, charging fees above the legal maximum and the real cost of recruitment. In the host countries, the jobs that the migrant women go into may not be covered by labour legislation. For example, those who go into domestic service are in individualized situations in homes where there is greater isolation and lower likelihood of establishing networks of information and social support. Therefore, they are more vulnerable to exploitation and abuse, as compared to male migrants who commonly work in groups, such as on construction sites or agricultural farms.

Growing proportions of these women are illegal migrants who have been trafficked. Trafficking in women and girls has risen to such alarming levels that it is now high on the international political agenda. Many of those trafficked end up in forced prostitution and other forms of exploitative employment. Their situation has been described as: "a continuum ranging from slavery or slavery-like treatment of trafficking victims on one end to criminal exploitation of smuggled economic migrants including fair labour and safety standard violations on the other. In the worst cases of involuntary servitude, violence and human rights abuses, trafficked women work anywhere from sixteen to twenty hours per day, and often live in conditions of captivity. They are kept in situations of forced labour through sexual, physical or psychological abuse, threats of violence to themselves and/or their families, bonded labour, enforced isolation and/or seizure of their passports, travel or identity documents".

In both sending and receiving countries, unions have established programmes to protect and organize these vulnerable workers. Some of the specific measures that unions can adopt to assist migrant workers, in particular female migrant workers, are:

Checklist:

- Inform migrants of their rights and provide information materials in

local languages;

- Provide migrant workers a list of contacts/addresses, such as trade unions, NGOs and embassies, where they can seek refuge or assistance in the event of abuse or exploitation;
- Establish networks between trade union organisations in the host countries and the countries of origin;
- Provide vocational training for migrant women so that they can diversify their skills and have access to better jobs;
- Include the concerns of migrant women in collective bargaining;
- Condemn countries which exploit migrants, particularly host countries which ban the creation of unions by migrant workers;
- Demand rigorous checks on the use of clandestine labour and the condemnation of employers using clandestine labour;
- Negotiate equal pay for migrant workers;
- Provide potential migrants with realistic information on working conditions overseas;
- Encourage governments to keep proper and strict checks on the activities of recruitment agents and employment agencies;
- Help women migrants to form their own organisations in both sending and receiving countries;
- Lobby for the appointment of gender-sensitive labour attaches in host countries to help look after the welfare of the migrant women workers;
- Lobby for changes in legislation to protect the rights of migrant labour.

Workers in export processing zones

Globalization has seen a dramatic growth in production chains which now stretch around the world. Export processing zones (EPZs) house many of the enterprises involved in these chains. Foreign investment is a crucial component of zone investment and governments are increasingly competing with each other in offering generous incentives and privileges to attract investors and entrepreneurs. Zone-operating countries hope that the EPZs will contribute to overall economic development and employment creation. However, they often encounter social and labour problems in the process, particularly in situations where investors have been allowed to depart from basic labour standards.

There are very few countries which openly and officially exclude zones from the national labour legislation and system of labour-management relations. With a few notable exceptions, unions are permitted to operate in the zones, but their overall effectiveness is curtailed by subtle or

explicit obstacles imposed by either governments or employers.

Even when freely permitted to operate, unions often find it difficult to organize workers in the EPZs. The characteristics of the workers themselves may be the source of problems. Some 27 million people work in at least 2,000 EPZs worldwide; between 60 to 90 per cent are women. They tend to be young (16-25 years of age) and in their first job and, therefore, have little experience or exposure to the labour movement. There also tends to be high worker mobility; drop-out rates are often high and workers do not expect to develop careers in the zones - so unions may have problems retaining members.

Also, the special characteristics of EPZs can make traditional collective bargaining difficult. Given the size and breadth of most large multinationals, unions in a developing country may find it impossible to gain access to the 'real decision makers'. Major decisions affecting local plants might be taken at head office several thousand miles away, without either union or local employer input. Similarly, the 'footloose' nature of some multinationals can undermine union effectiveness. Faced with a strike, a company might threaten to relocate. Unions are forced to make tough concessions when faced with relocation or closure threats. There have also been many reported cases of employer actions against union leaders, including intimidation, dismissals, black lists, and collective dismissals upon union registration or when union activities are noticed. Lack of support from the government to enforce labour legislation weakens the credibility of the union movement and the capacity to organize.

"Where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively."

To combat the asymmetric power of multinationals at the negotiating table, unions can:

Guidelines:

- Organize workers at the industry level and regional level, rather than at the enterprise-level:
- Engage in company-wide labour coordination:
- Promote company-wide worker-management consultations and collective agreements:

- Carry out high profile campaigns, together with consumer groups, NGOs, etc., to inform the public of companies that do not allow unions in their plants or do not observe proper working conditions. Such campaigns can include boycotts of the products of the companies. Many multinational companies have voluntarily adopted guidelines or codes of conduct for themselves and their local partners affirming freedom of association and gender equality, for example, Benetton, IKEA, Reebok.
- Help companies develop, implement and monitor multinational codes of conduct. Correctly applied and independently monitored, such codes of conduct can help prevent the more serious abuses of workers' rights and promote gender equality. Union involvement in such initiatives could help ensure that codes of conduct promote social dialogue and do not become a substitute for the right to freedom of association and collective bargaining.



CHAPTER 6

LABOUR LEGISLATION

Labour Relations Act, 1995

This Act applies to all employees and job applicants except in relation to security and defence services. The major features of the Act relevant to the employment rights of women may be summarised as follows:

The stated purpose and objects of the Act are set out in s. 1 and include to advance social justice, give effect to fair employment practices in s. 27 of the South African Constitution, and to give effect to ILO obligations.

Section 5 prohibits discrimination against employees and job applicants for excising rights conferred by the Act. Most of the rights relevant to the employment opportunities of women were subject to transitional provisions in this Act and have been moved to the Employment Equity Act 1998. Generally, the rights remaining in the Act relate to trade union membership and organisational rights.

Note that there are special provisions in s. 17 which allow, but restrict, the rights under the Act of the trade union representatives of domestic workers.

For temporary employees, s. 198 of the Act differs from s. 57 of the Employment Equity Act 1998, in that any temporary employment service remains their employer. However, both the client and the temporary employment service are liable for breaches under the Act, and there is provision in s. 198 for this form of work to be governed by a collective agreement.

Unfair dismissal

Unfair dismissal is dealt with in Chapter VIII of the Act:

- Significantly for women, under s. 186 dismissal includes a failure of an employer to allow an employee to return after maternity leave. Given the importance of atypical working patterns, also of interest is that dismissal can include renewing a contract of employment on less favourable terms.
- Under s. 187, a dismissal is automatically unfair for a number of reasons which includes:

- i. pregnancy, intended pregnancy or any reason relating to pregnancy; and
- ii. unfair direct or indirect discrimination on any arbitrary ground, including amongst other things, gender, sex, or family responsibility.

Other dismissals may also be unfair if the reason for the dismissal is not fair relating to conduct, capacity or operational requirements. In assessing this, under s. 188(2), codes of good practice under the Act are relevant. There is a relevant code in force on dismissal set out in Schedule 8 of the Act. Section 12 of the Code deals with dismissals on operational grounds. Paragraphs 8 is particularly relevant to women and warns of the need to ensure that dismissals do not have an indirect discriminatory affect. An example given is that selection of part-time workers for dismissal may result in unlawful discrimination against women. Paragraph 9 indicates that the "last in first out" principle may need to be adapted to remain fair, and should not undermine affirmative action programs.

Basic Conditions of Employment Act

Basic Conditions of Employment Act, 1997.

The stated purpose of this Act is to give effect to s. 23(1) of the South African Constitution (the right to fair labour practices) and South Africa's obligations as a member of ILO. The Act applies to all employers in the public and private sectors (but note the delayed application to the public sector in Schedule 3) and employees subject to limited exceptions set out in s. 3 (such as security and defence services). Independent contractors are not covered by the Act. The Act uses gender neutral language. Provisions of particular relevance to women are:

Labour market concentration, for example in the retail sector, and atypical forms of work, such as part time work are issues for women. Note, therefore that Chapter Two (working time) does not apply to sales staff who travel to customers premises and regulate their own hours (paragraph (6(1)(b)). Both Chapter Two and Three do not apply to employees who work less than 24 hours a month. Note also s.9 (2) which allows an agreed extension of an employee's ordinary hours of work by:

"up to 15 minutes in a day but no more than 60 minutes in a week to

enable an employee whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work."

Atypical working patterns also benefit, in the calculation of periods of service for the purposes of the Act, from s. 84 which allows separate periods of employment (with the same employer) to be added together provided that the breaks in employment are less than 12 months.

For temporary employees, s. 82 of the Act differs from s. 57 of the Employment Equity Act 1998, in that any temporary employment service remains their employer. However, both the client and the temporary employment service are liable for breaches under the Act.

Section 7 provides that, in the regulation of working time, employers must pay "due regard" to, amongst other things, the health and safety of employees and their family responsibilities (see also the "Code of Good Practice on the Arrangement of Working Time").

Also relevant to family responsibilities is the provision in s. 10 that employers can not require employees to work overtime except with agreement (including a collective agreement) and that it can not be more than three hours a day or ten hours a week. Note also that night work can only be required with agreement (s. 16). Section 15 also set daily and weekly rest periods between ending and recommencing employment which would assist workers with family responsibilities.

Leave provisions are set out in Chapter Three of the Act. Of significance to women are the following provisions:

Maternity

Section 25 stipulates at least four consecutive months maternity leave which may be taken up to four weeks before the expected birth or from another date for certified medical reasons. Work is prohibited for six weeks after the birth in the absence of medical certification of fitness to work. Under s. 25(4):

"An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth."

Maternity benefits are dealt with under the Unemployment Insurance

Act 1966.

Alternative Work for Pregnant Employees and Nursing Mothers

Under s. 26 an employer must not require or permit a pregnant or nursing employee to perform work that is hazardous to her health or the health of her child. In addition, during pregnancy and six months after the birth, employers must, if it is practicable to do so, offer suitable alternative employment if the employee works at night or her work poses a danger to her or her child's health or safety. The terms and conditions of the alternative work offered must be no less favourable than the employee's ordinary terms and conditions (see also "Code of Good practice on the Protection of Employees During Pregnancy and after the Birth of a Child".

Family Responsibility leave

Section 27 requires family responsibility leave for male and female employees employed for longer than four months and who work over four days a week. This is three days annual non-accrual leave, at normal pay rates, which can be taken on the birth of the employee's child and when a child is sick (note that a child is defined in s.1 as up to 18 years of age), and following bereavement of close family.

Section 30 requires a prescribed notice to be displayed in the workplace informing employees of their rights under the Act.

Labour market concentration in farm and domestic work are issues for women. Farm and domestic workers are entitled to four weeks termination notice, the same as employees who have been employed for more than a year (see s. 37(1) (c)). Note, in Schedule 3, the continued application of a limited number of the provisions in the Basic Conditions of Employment Act 1983 to these sectors pending the making of relevant sectoral determinations. This is particularly important in relation to "payments in kind".

Lack of education can be an important issue for women workers. Note that illiterate employees can give notice orally and any employee who receives a notice is entitled to have it explained orally.

Employment Equity Act

The Employment Equity Act 1998 contains a number of provisions providing for affirmative action and protection against amongst other things, unfair discrimination and sexual harassment (The Act does not provide a definition of "unfair discrimination" but see ss. 6(2) and (3) below.).

The Act applies to all employers (public and private sectors) and uses gender neutral language. Provisions of significance to women are set out below.

Unfair Discrimination

Section 5 provides for the elimination of unfair discrimination by requiring that "every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice."

"Employment policy or practice" is widely defined in s. 1 and includes recruitment, job classification, remuneration, employment benefits and terms and conditions, promotion and dismissal.

Section 6 prohibits unfair discrimination

"6(1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including... gender, sex, pregnancy, marital status, family responsibility..."

Affirmative action is not unfair discrimination nor is to "distinguish, exclude or prefer any person on the basis of an inherent requirement of a job". Under s. 6(3), harassment of an employee for a ground set out above (ie: including sex) is specifically referred to as a form of unfair discrimination and is prohibited.

"Pregnancy" is defined in s. 1 as including "intended pregnancy, termination of pregnancy and any medical circumstances related to pregnancy". "Family responsibility" is defined as "the responsibility of employees in relation to their spouse or partner, their dependent children or other members of their immediate family who need their care or support". Under s. 9, an applicant for employment is included in the definition of "employee" for the purposes of s. 6.

Affirmative Action

Affirmative Action is provided for in Chapter III, but generally (see below) applies only to "designated employers". Designated employers are defined in s. 1 as including an employer who employs 50 or more employees or less than 50 but with an annual turnover set out in Schedule 4 of the Act. A collective agreement can also provide that a given employer is a designated employer for the purposes of the Act. The public sector is also covered except for security and defence services.

Note, however, that under s. 14 other employers may voluntarily agree to comply with Chapter III as if they were designated employers. Also the Labour Court may direct any employer, even if they do not fall within the definition of a "designated employer", to comply with Chapter III as if they were. In addition, schemes to avoid the application of Chapter III by taking a measure to avoid becoming a designated employer are prohibited by s. 61(2).

The incidence of atypical forms of work amongst women workers is an important issue. The application of s. 57 of the Act to temporary employment services is therefore significant. It deems the clients of the temporary employment service to be the employer if employment with the client is of indefinite duration or for a period of three months or longer. In addition, if a temporary employment service, on the express or implied instructions of a client, commits an act of unfair discrimination, both the temporary employment service and the client are jointly and severally liable.

The affirmative action provisions of the Act set out below only apply to "designated groups" which includes women. Under s. 13, "designated employers" must undertake the affirmative action measures set out in s. 15:

"15(l) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer ..."

Affirmative action measures are defined broadly and include measures to:

- a. identify and eliminate employment barriers, including unfair discrimination;

- b. create diversity in the workplace based on equal dignity and respect of all people; and
- c. make "reasonable accommodation" for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer.

The measures can be designed to ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels, and the training and development of people from designated groups. They can include preferential treatment and numerical goals, but can not include quotas. Also, nothing in s. 15 requires the establishment of absolute barriers to people who are not from designated groups.

Note that the phrase "reasonable accommodation" is defined in s. 1 as "any modification or adjustment to a job or to the working environment that will enable a person from a designated group to have access to or participate or advance in employment"

In formulating affirmative action measures, employers are required to undertake consultation and attempt to reach agreement with employees (see s. 16). In addition, under s. 19, employers must conduct an analysis of employment policies, practices, procedures and the working environment, which identifies employment barriers for people from designated groups, and determines the representation of people from designated groups in various occupational categories. Details of the requirements of the analysis are prescribed in regulations.

Employment Equity Plans

"Employment equity plans" under s. 20 are an additional requirement of affirmative action. The main features of these plans are that they must:

- a. achieve reasonable progress towards employment equity;
- b. state the objectives to be achieved for each year, those managers responsible for the implementation of the plan, and the affirmative action measures to be implemented;
- c. set numerical goals to achieve the equitable representation in occupational category and level in the workforce and a timetable within which this is to be achieved, and the strategies intended to achieve those goals;
- d. set a timetable for each year of the plan for the achievement of goals and objectives other than numerical goals; and

set procedures to monitor and evaluate implementation of the plan and to resolve any dispute about the plan;

The plan may not cover a period shorter than one year or longer than five.

Training

Disadvantages in training, education and experience are important in relation to equality in employment for women. Subsection 20(3) of the Act is significant in relation to women's recruitment and promotion as it states that suitability for a job depends, amongst other things on, the "capacity to acquire, within a reasonable time, the ability to do the job." Also, in making decisions on job suitability an employer may not unfairly discriminate against a person solely on the grounds of lack of relevant experience.

Reporting by Employers

Under s. 21, designated employers must submit reports at designated intervals (generally annually) to the Department of Labour. These reports are public documents and, under s. 22, are summarised in the employers annual financial report (or tabled in parliament in the case of government departments). There are also record keeping requirements imposed by s. 26 of the Act.

Under s. 24, designated employers must assign one or more senior managers to take responsibility for monitoring and implementing their employment equity plan. Under s. 25, all employers must display notices to inform employees about the provisions of the Act. In addition, employment equity plans, reports, compliance orders, arbitration awards and orders of the Labour Court concerning the Act must be made available to employees.

Income Differentials

Measures to overcome pay differentials and/or discrimination that will assist women are found in s. 27 of the Act which requires designated employers to report to the Employment Conditions Commission on the remuneration and benefits received in each occupational category and level. If income differentials are disproportionate, measures must be taken for their progressive reduction subject to guidelines by the Minister

for Labour. These measures may include:

- collective bargaining;
- compliance with sectoral determinations made by the Minister under s. 51 of the Basic Conditions of Employment Act 1997 (no relevant determinations to date);
- applying the norms and benchmarks set by the Employment Conditions Commission; and,
- relevant measures contained in skills development legislation;

Chapter V provides for enforcement of the Act by labour inspectors (s. 35) through a system of undertakings to comply (s. 36) and compliance orders (s. 37) enforced by the Labour Court. Of particular interest are the guidelines to be used in assessing compliance with the Act found in s. 42 which include the following factors:

- a. the extent to which suitably qualified people from and amongst the different designated groups are equitably represented within each occupational category;
- b. progress made in implementing employment equity by other designated employers operating under comparable circumstances and within the same sector; and,
- c. the reasonable efforts made by the employer to implement its employment equity plan and to eliminate employment barriers that adversely affect people from designated groups.

Section 51 of the Act prohibits discrimination against employees who exercise their rights under the Act. Chapter VI contains provisions which apply certain relevant parts of the Act to government contractors and establishes a compliance certificate system.

Also of significance to women is s. 60 of the Act which requires employers to consult with relevant parties and take the necessary steps to eliminate conduct by employees in contravention of this Act (for example in a sexual harassment case). The employer is liable for an employee's actions if the employer fails to take these steps, or to prove that it did all that was reasonably practicable to ensure that the employee would not act in contravention of the Act.

It is also of interest to note that under s. 11 of that Act, employers bear the onus of proof of establishing that any discrimination is fair.

CONSTITUTIONAL RIGHTS HEALTH

Introduction

The Constitution entrenches the right to accessible health care and indicates that the state must take steps towards realising health care rights. Estimates shows that when women are grouped together with children, they compose 73% of the entire population. Importantly, statistics indicate that 35-55% of the population live in poverty and, as has been proven, poverty is a major determinant to an individual's health status. Thus, women are acknowledged as extremely vulnerable and most affected by our currently fragmented and underfunded health care system.

Reproductive Rights

Reproductive rights incorporate a collection of rights and issues of which includes, *inter alia*, the right to security, dignity and physical autonomy as well as issues surrounding reproductive technology, HIV/Aids, sex education and access to health care. The right to bodily and psychological integrity, reproductive self determination access to reproductive health care, are all entrenched rights within the Constitution. South Africa is also bound by the Cairo Declaration which states that women have the right to make decisions concerning reproduction free from coercion and discrimination.

IVF

Historically only married women were allowed in vitro fertilisation treatment and this had to be with the consent of her husband. In 1996 a complaint was brought to the Human Rights Commission which resulted in the Minister for Health changing the regulations.

Surrogacy

Surrogacy is currently unregulated in South Africa.

The Draft Bill on Surrogate Motherhood was tabled in 1995 by the SALC and sets out to regulate the artificial insemination of surrogate mothers.

At present there are no legal provisions protecting the interests of surrogate children, the surrogate or needy parents. The Draft Bill has been tabled in Parliament and is currently being considered by a Parliamentary Committee

Sterilization

Sterilization is provided free of charge at state institutions and women do not need the consent of their spouses or partners to undergo this procedure. However, anecdotal evidence suggests that in practice often doctors do require that the partner knows about the proposed surgery and agrees to it. Further, access to such a procedure is often difficult, especially in rural areas.

In cases where the woman is either incapable or legally incompetent to give her consent to sterilization then three requirements must be met. Firstly, two medical practitioners must certify that the woman suffers a hereditary condition which would cause the child to suffer serious disability, or that the woman cannot comprehend or manage parental responsibilities. Secondly, the woman's guardian or a magistrate must consent. Lastly, written authority from the Minister of Health or authorized medical officer of the Department of Health must provide written authority.

Termination of Pregnancy

The Choice on Termination of Pregnancy Act now ensures that a woman is able to access, at designated institutions, a termination without the consent of her partner or, in the case of a minor, her parents. This is in contrast to earlier, repealed, legislation which virtually denied access to legal abortions and, arguably, contributed to between 42,000-300,000 illegal and dangerous abortions.

Terminations occur under one of three categories. Firstly, on demand during the initial twelve weeks of pregnancy. Secondly, between the thirteenth and twentieth weeks if her medical practitioner believes that, inter alia, her physical or mental wellbeing is at risk, that rape or incest was involved or that the foetus would be at risk of serious physical or mental defects if the pregnancy were to continue. Lastly, after twenty weeks only if the medical practitioner, in consultation with either a midwife or second practitioners, believe that the pregnancy would endanger her or result in severe injury or deformation to the foetus.

For those women mentally incompetent and unable to make such a decision, the same grounds apply for pregnancies up to twenty weeks with the additional consent needed from either her guardian, spouse or curator personae when the guardian or spouse cannot be found. However, there are medical grounds whereby two medical practitioners, or one plus a midwife, may proceed without consent or if consent is refused by the guardian, spouse or curator personae.

HIV/AIDS

For women in developing countries, who are economically, sexually and socially the most disadvantaged and vulnerable citizens, exposure to and infection by the HIV/Aids virus is most prevalent and occurs primarily through heterosexual intercourse. Statistics for 1996 have shown that 14% of pregnant women were HIV positive which may, in some urban areas, rise to 30%. Despite proven indications that AZT treatment for HIV during pregnancy reduces transmissions to the newborn by 67.5% hospitals do not offer treatment arguably contributing to the overall increase of children being born HIV positive.

For those individuals afflicted with the HIV/Aids virus the most protective aspect of South African law is found within section 9 of the Constitution which makes any form of unfair discrimination based on, *inter alia*, disability unconstitutional. This provision is of vital importance in view of the fact that current legal provisions regarding to HIV and Aids derive from an assortment of common and statutory laws, regulations, and also from ethical guidelines and practice rules of the South African Medical and Dental Council.

Proposals for Reform

The government has recently produced a White Paper on the transformation of the health system, but despite recognising women's particular vulnerability to HIV it does not go further to provide a specific gender policy on women and Aids. The SALC has also recommended that an HIV and Aids Act be passed, to which, the government has yet to act. In view of women's greater biological vulnerability, their position as child bearers and victims of rape plus the fact that Aids is currently on the register of communicable diseases, it is therefore most crucial that appropriate steps are taken to ensure that unfair discrimination and testing without consent no longer occur.

Discrimination on the basis of HIV is outlawed in the workplace in the Employment Equity Act and is being considered in the drafting of Equality legislation by the Human Rights Commission and the Department of Justice.

Women and the Primary Health Care System

Primary health care is administered by the District Health Authorities and embodies services such as family planning, HIV/Aids education and counselling, maternal and child health services such as deliveries, antenatal, postnatal, and neonatal care.

As of 1 June 1994 pregnant women, women 42 days post pregnancy, women with complications arising from delivery and children under the age of six have been entitled to free health care at all state clinics and hospitals. From 1 April 1996 access to free primary health care was extended to all. The Department of Health, as indicated in its White Paper, plans to establish a Directorate of Maternal, Child and Women's Health (MCWH) to focus on the urban poor, rural and farm workers.

SOCIAL SECURITY AND INTEGRITY

Introduction

As the White Paper for Social Welfare indicates, social security should cover: a wide range of public and private measure that provide cash or in-kind benefits .in the event of an individual's earning power permanently ceasing, being interrupted, never developing... only at unacceptable social cost and such person being unable to avoid poverty ... [also] in order to maintain children.

The government's Growth, Employment and Redistribution programme (GEAR) has emphasised the role of the market in social security provision, and the role of the state as providing only a "social security net". However, as things currently stand, few women will be adequately protected by the market as barely 50% of the total labour force has formal employment.

Social Assistance

Two of the three main categories of non-contributory grants that impact women most are, the elderly and child and family support. As such social assistance represents some of the most significant mechanisms of poverty alleviation and income redistribution and can protect those whose income has been stopped by reasons such as old age or pregnancy or help others to live above the poverty line.

Old Age Pensions

Research has shown that the pension system is well targeted for rural areas (where the majority of poor are women and often bear child care duties), performs well in gender terms and acts as a source of 'pooled' income to support other family members (ie children).

"While the government concedes that old age pensions constitute one of its most powerful tools in poverty alleviation, pensions have only been increased by 4.3% in the current fiscal year, which is less than the prevailing inflation rate. Further, pension back-pay will now only be allowed to accumulate for 3 months despite the fact that pensioners can wait up to one year from date of application to receiving first benefit thus drastically reducing the amount first time pensioners receive."

Child and Family Support Grants

As at 1 April 1998 a new Child Support Maintenance Grant (CSG) has replaced the old racially biased State Maintenance Grant (SMG). The CSG has been criticised for restricting the eligible child's age to 7 from 18 (or 21 for those in school) as well as drastically reducing the overall level of the grant. Further, the new system has a number of negative gender implications such as the means test and other conditions applicable to the CSG. Many women will find it difficult to provide the requisite proof of household income and proof that they have 'made efforts' to secure maintenance from the parent(s) concerned as well as trying to meet the excessive conditionality of the grant. Obviously, the current grant system excludes those poor households who do not have elderly members or children qualifying for the CSG and also completely exclude non-citizens, including those with permanent residence status. However, positively the grant is payable to the 'primary care-giver' which breaks with the nuclear models of the family that are inappropriate in the South

African context.

For those currently receiving Child Support Grants (CSG) they will receive about one third less than their previous payments initially as the three year process of phasing out these grants with the replacement of the CSG begins. Nevertheless, state support for child care does have positive gender implications as it inevitably relieves some of the pressures surrounding child care and as such does play a positive role in advancing substantive equality.

Proposals

The allocation of more state resources to the above grants will further address the poverty of families in general and women in particular.

Social Insurance

The Ministry for Welfare and Population Development's White Paper for Social Welfare sets out a national development social welfare strategy that will require the restructuring of social insurance including unemployment insurance and health insurance for universal access meeting a minimum income to meet basic subsistence needs. The Social Welfare Action Plan supports this and sets a period of five years to implement the White Paper policies.

Those who do not have access to work related benefits must rely on the flawed social assistance scheme outline above. Access to social insurance schemes has enormous gender implications as access to contributory social insurance is usually tied to a stable, uninterrupted job in the formal sector. Many women are indirectly excluded because of their higher unemployment rates, their prevalence in less secure, 'atypical' informal sector jobs (ie home-work, seasonal work), and because of the fact that their employment record is much more likely to be interrupted due to child care and other domestic responsibilities.

As women are found, more often than not, within the 'atypical' working sector, they are also discriminated against by private occupational retirement fund schemes. It is hoped that proposed anti-discrimination legislation will provide recourse and correct discriminatory insurance policies.

Unemployment Insurance

The Unemployment Insurance Act provides benefits for, *inter alia*, unem-

ployment, maternity leave (albeit to a current minimal standard of 40% of total wage for three months with the Basic Conditions of Employment Act providing four months leave only) and illness to the exclusion of casual workers, piece workers, seasonal workers and domestic workers. The overwhelming majority of domestic workers are women (there are approximately 860,000 domestic workers), and as UIF covers maternity benefits their exclusion from the Act is a major disadvantage.

Occupational Injuries and Diseases

The Compensation for Occupational Injuries and Diseases Act (COIDA) is an employer contributory fund which entitles workmen to compensation upon workplace injury. Again domestic workers in private households are completely excluded from any of COIDA's benefits and if injured may only seek recourse through delictual remedies which is a protracted and expensive proposition. This is not in harmony with the human rights commitments expressed in the Labour Ministry's Programme of Action nor does it grant them access to critical social security rights.

Proposals for Reform

- a) There are no known proposals for legislative amendments to the above acts.
- b) It is hoped that anti-discrimination legislation currently under preparation by the Human Rights Commission will include more effective remedies against unfair discrimination in social welfare schemes.

Although the social security system in South Africa is fragmented, discriminatory and fraught with delivery problems it remains an important measure for the alleviation of poverty and to enable women to escape destitution.

FREEDOM, SECURITY AND PHYSICAL INTEGRITY

Introduction

Physical integrity encompasses a broad range of issues which includes the obvious criminal harms of rape and assault as well as subtler forms such as psychological abuse. The right to physical integrity is protected

under section 10 of the Constitution. South Africa is currently cited as one of the most violent countries in the world. Studies indicate that an estimated 60% of all South African women experience some form of abuse within relationships.

Rape and Sexual Violence

The current legal definition of rape refers only to the intentional and unlawful penetration of the penis into the vagina. This definition excludes sodomy, penetration by foreign objects and coerced oral sex which are classified as indecent assaults. Forced sexual intercourse with an animal would attract the charge of being an accomplice to bestiality for the third party.

Prior to the recent Prevention of Family Violence Act husbands were exempt from prosecution on the grounds of marital rape as marriage was believed to provide blanket consent to intercourse. This is no longer the case under section 5 of the Act which appears to apply to both customary and civil unions. Gang rapes, which are not specifically recognised in law, against poor, homeless or younger women are increasing. In order to secure a rape conviction at least one individual must be identified as the perpetrator then the remainder may be convicted as accessories. The issue of consent does not usually arise.

In the case of sexual offences against minors, the Sexual Offences Act states that it is an offence for any man to have or attempt to have sexual intercourse with a girl under the age of sixteen years, or to commit/attempt to commit an immoral/indecent act with boy/girl under the age of 19 years. Consent is not a defence. The SALC is currently undertaking further work on a project on Sexual Violence Against Children.

The biggest obstacle for women is to be found in rules of evidence whereby the complainant's statement must survive three stages of judicial inquiry. There must have been hue and cry raised and, as regards the issue of consent, evidence may be introduced as to the sexual history of the complainant. These issues are highly discriminatory and do not take into account the realities of rape, the victim's post-rape reactions nor the often improperly documented evidence supplied by the district surgeon. This rule of evidence which was based upon the myth that women behave in an irrational manner and are probably liars when claiming rape has finally been ousted by the recent Appeal Court decision whereby the judge stated that the court may need a "cautionary approach" but not a cautionary rule in rape cases. A further problem is

found in the fact that an alleged rapist may plead an honest but mistaken belief that the victim had consented to sexual intercourse.

Reform proposals

Comprehensive reforms in the area of sexual violence are required. However, there are no known processes to address these either by the SALC or by the Department of Justice under whose jurisdiction this would fall.

Sexual Harassment

At present legislation does not exist which specifically addresses or defines sexual harassment outside of labour legislation. Women exposed to this indignity must either lay a criminal charge of rape or assault (which attracts a high burden of proof on the complainant), crimen injuria (damage to reputation or dignity) or use civil delict remedies (ie wrongful and intentional impairment to, *inter alia*, physical integrity).

Reform proposals

The equality legislation drafting process of the Human Rights Commission for the Department of Justice is considering the inclusion of sexual harassment in equality legislation.

Domestic Violence

Introduction

Section 12 of the constitution enshrines freedom and security of the person at both public and private levels. This provision is of vital importance as it specifically extends protection to the area where most violent crimes against women occur, namely in the private, domestic sphere.

However, in the past law enforcement agencies have not actively interfered in what was generally considered purely a private matter. Despite a recent shift in investigatory behaviour, the South African Police Services policy recently stated that it will delay the investigation of complaints of domestic violence for seven days due to current budgetary restraints. This is most worrying especially as domestic violence often leads to the most serious of gender motivated crimes, femicide, the killing of a woman by her intimate partner.

Civil Remedies

Domestic violence was first addressed specifically as family violence by the much debated Prevention of Family Violence Act. The Act applied only to men and women who enjoyed customary or civil marriages or lived together as though they were married. This effectively denied protection under the Act to former wives, gay relationships, domestic workers, teenage girls, prostitutes and relatives.

Several other problems were also identified. Those women who did fit into the scope of the Act and are abused may apply for the interdict. However, the interdict did not provide the best form of protection for all women as, *inter alia*, the poor cannot afford the costs of issuing an interdict, rural dwellers have difficulty accessing a magistrate and ultimately it is difficult to ensure that warrants of arrest are promptly, if at all, executed due to lack of police co-operation and understanding.

The Act also failed women as it did not define the type of behaviour that the interdict covered. This caused problems most easily demonstrated in cases of potential threat, for example in stalking or verbal abuse, whereby magistrates had wide discretion and were reluctant to issue an interdict if physical violence had not taken place. Further concerns surrounded the constitutionality of the interdict as it applied in perpetuity and the respondent could be arrested before having the chance to state his case.

In addition to the interdict the abused individual may seek, *inter alia*, a Trespass or Eviction Order, Peace Order or forfeiture of benefits of community of property upon divorce. It is important to note that these are all civil remedies and do not adequately address the seriousness of domestic violence. In fact, use of the civil interdict highlights the fact that domestic violence is considered to be less serious than violence found outside of the domestic sphere where use of criminal remedies are paramount.

The new Domestic Violence Act has attempted to address some of these concerns. In particular it has extended the categories of persons who can apply for protection under the Act and it has also extended to the definition of domestic violence to include non-physical conduct.

Criminal remedies

Criminal charges of assault, assault with intent to do grievous bodily harm, sexual assault, rape and marital rape are all available to the abused individual. The problem, however, is the strict onus of proof

which must be met in order for a successful conviction which is most problematic in domestic cases as women do tend to hide physical proof out of fear and wish for privacy within their communities.

Reform Proposals

Currently an NCPS Victim Empowerment Business Plan is being drafted to include as policies, *inter alia*, a South African Victim Charter, Victim Policy Framework, a Model for Victim Empowerment and a policy on Compensation for Victims of Crime. However, a comprehensive review of the criminal law in relation to sexual violence is required.

Battered Women as Murderers

In other jurisdictions, self defence (including evidence of the battered women syndrome) has been recognised as a defence to killing their abusive partners and is granted a special category. South Africa has yet to either recognise this phenomenon or accord the crime a separate category. At best battered women turned perpetrators may attract diminished criminal capacity by having acted out of desperation or must rely on the complete defence of "non-pathological criminal incapacity" which is highly criticised as not being a recognised psychological condition anywhere in the world.

Reform Proposals

No information is available on initiatives by government, although research is being conducted by the Justice for Women Alliance based in Johannesburg.

Women's Shelters

Current legislation offers no provision for victim support. Thus the few women's shelters that do exist are not state-funded. Shelters are an essential provision for women and children escaping domestic abuse and violence and provide ongoing support and information on their rights.

Reform proposals

The SALC has recognised that violence against women is a social problem and that gaps do exist in the provision of support services. Thus, they have stated that changes to legislation "...should be fortified by the provision of shelters and referral services ..." This responsibility would typically rest with the Department of Welfare, however the majority of the

social welfare budget is allocated to pension payouts with little else to be offered to other areas.

LEGAL STATUS AND CAPACITY

Introduction

Despite Constitutional guarantees of equality for all persons, glaring incongruities exist within the law whereby certain women continue to be denied full legal status and the capacity to enter into contracts, litigate and to own property or acquire credit. This is contrary to section 9 of the Constitution.

Legal Status

Historically women were subjugated under Roman-Dutch law having an inferior status especially when married in community of property and falling subject to the marital power. The Fourth General Law Amendment Act 132 of 1993 repealed the last vestiges of marital power for women in civil marriage. The Constitution expressly guarantees freedom from any form of discrimination based upon, *inter alia*, gender, sex, pregnancy or marital status.

Customary Law

The enactment of the Recognition of Customary Marriages Act 120 of 1998 and the repealing of section 1 IA of the Black Administration Act has significantly improved the position of women married in terms of customary law. Previously women married in terms of customary law were treated as minors and were subject to the guardianship of their husbands.

Discrimination by way of attitudes

Sometimes women are discriminated against not because of the law, but because of outdated stereotypes which continue to affect policies and practices. For example, more often than not one must own property in order to receive bank credit. Anecdotal evidence of financial institutions and banking practice indicates that for women married out of community of property, the consent of her husband may be required in order to secure credit.

Proposals for Reform

The Human Rights Commission is currently drafting equality (anti-discrimination) legislation. It is hoped that once this mechanism is in place that discriminatory practices based on such attitudes will finally fall away, else be challenged.

Surnames

The common law maintains that a wife assumes her husband's rank and dignities. This is reflected in the practical application of the Births and Deaths Registration Act whereby she is unable to retain her own name and pass it to her child. If the parents wish the child to assume either the mother's name or both names discretionary approval, given on the basis of good and sufficient reason being provided, must be sought from the director-general. In the case of illegitimate children the notice will fall under the mother's name unless both parents come forward and request otherwise.

Once married, the wife's name is automatically changed by the Department of Home Affairs to that of her husband's. Thus, she is legally prevented from using her maiden name under section 26(1) unless an application is made to change her name again demonstrating good and sufficient reason to do so.

These provisions not only discriminate on the basis of gender, sex and marital status and hence violate section 9 of the Constitution, but also contravene article 16(1)(d) and (g) of CEDAW which states that women and men have the same rights and responsibilities as parents. This includes the right to choose a family name.

Proposals for Reform.

Section 3 of the Births and Deaths Registration Amendment Bill proposes the insertion of section 26(1)(c) which would allow a woman to add her previous surname to her married name without having to seek permission of the Director-General. There is no information on when this bill will be passed by Parliament or whether any further changes to the Act are planned.

Citizenship, Unauthorised Immigrants and Refugees

Due to the way in which the Aliens Control Act is worded most of the policy and practice surrounding immigration is governed by departmental

circulars and regulations. These are inaccessible to the public and offer nothing but procedural uncertainty which effectively impedes any available appeal.

Citizenship

No citizen may be deprived of citizenship and in the case of marriage section 14 of the South African Citizenship Act states that South African citizenship may not be lost or gained simply due to marriage. On an historical note, this is a change from much earlier legislation which once forced a woman to assume automatically her husband's nationality upon marriage.

Unauthorised Immigrants

Unauthorised immigrants are estimated to range in number from 2.5 to 4.5 million individuals. They may not seek Constitutional protection by reason of their illegal status and are therefore at risk of abuse and unable to seek police protection. Anecdotal evidence indicates that women and children are even further at risk when detained as they are often not separate from male detainees. In fact throughout the process of arrest, detention and repatriation women are especially vulnerable to sexual harassment and abuse with no recourse to justice.

Women as authorised immigrants can also be at risk and exploited in situations of arranged marriages/marriages of convenience. Husbands can threaten to expose such an arrangement if they complain of abuse and thus subject the woman to quick deportation with minimal administrative process and little chance for recourse under the Aliens Control Act.

Proposals for Reform

The Department of Home Affairs is to appoint a White Paper Task Group to draft immigration legislation. The tabling of an Aliens Control Bill is dependent upon a White Paper on Immigration being passed by Parliament.

Refugees

At present there is no legislation specifically addressing the issue of refugees and as such, asylum claims based on gender persecution are unlikely to succeed.

Proposals for Reform

The Green Paper on International Migration has recommended an extension of persecuted social groups to encompass, *inter alia*, gender, sexual orientation or caste. A Draft Refugee White Paper (20 June 1998) and Draft Refugee Bill, 1998 have been published. The Bill is expected to go before Parliament in 1999.

The Draft White Paper includes in its categories of persons genuinely at risk of serious human rights violations, persons at risk on account of gender, sexual orientation, disability, class or caste. The manner in which this is translated into the draft bill, and whether this provides sufficient protection on the grounds of gender, should be scrutinised.

HOUSING

Introduction

Section 26 of the Constitution provides for a right of access to adequate housing, prohibits arbitrary evictions and together with section 9 unequivocally requires equality in access to adequate housing. The former section further obliges the state to take reasonable legislative and other measures, within its available resources, to ensure the progressive realisation of the right to adequate housing.

The Department of Housing has identified female headed households, the elderly, rural households, the poor, the disabled and farm worker households as more vulnerable than others and accordingly in need of special measures. However, in order to ensure substantive gender equality, special measures are required not only for female headed households but also for the broader group of women, who, in the past have been subjected to discrimination on the basis of gender.

Access to Housing

Subsidies

In order to fulfil the right of access to adequate housing, the National Housing Subsidy Scheme (NHSS) has been implemented. Arguably its application may have certain disproportionately negative consequences for women as it operates on a one-off basis, often prejudicing women who may be forced to stay in abusive relationships in order to maintain

housing. The problem is further exacerbated by the fact that the couple usually, due to the unequal power dimensions within many relationships, register the home in the male partner's name. Whilst the system assumes that these women will be protected by the legal system, many lack knowledge of their legal rights and have little access to legal assistance.

Proposals

a)The implications of customary and social practices, which mediate women's ability to realise their right of access to adequate housing, must accordingly be addressed in the formulation of housing legislation, (for example, discriminatory provisions relating to ownership and inheritance). b) The current subsidy scheme excludes single men and women and only makes provision for those in a relationship or those with dependants. It also excludes parents under the age of 21 thus putting large numbers of young mothers at risk of homelessness as they are highly unlikely to have alternative access to credit.c) Furthermore, a National Housing Code must be published which will lay down national norms and minimum standards for housing. It is important that this code includes gender equality as a national norm and minimum standard applicable to housing development.

The Development Facilitation Act

The Development Facilitation Act introduces measures to facilitate and speed the implementation of programmes in relation to land for, inter alia, residential use. It operates on the basis of gender neutrality with no specific reference to either female headed households or women.

The Act makes provision for a Development and Planning Commission which, despite referring to urban and rural interests, makes no such reference of gender. The absence of gender representivity is problematic in view of the powers of the Commission to advise the government on numerous issues including, ensuring appropriate emphasis on development for the benefit of low income and historically disadvantaged communities (ie. Female headed households).

The Rent Control Act

The Rent Control Act fails to accord any attention to discriminatory rental policies or patterns. This is particularly problematic in view of the reality that many women are discriminated against by being subjected to high-

er rentals than men with no simply legal remedy apart from the constitutional right to equality.

The Mortgage Indemnity Fund

Despite efforts by the Department of Housing's Mortgage Indemnity Fund to underwrite risks incurred in loans to low income communities, discrimination against women and female headed households still occurs widely in the private sector

Security of Housing

The Housing Act

National, provincial and local spheres of government are obliged to promote measures to prohibit unfair discrimination on the ground of gender by those in the housing development process. Government is further obliged to promote the housing needs of marginalised women and other groups disadvantaged by unfair discrimination. Provision is also made for the establishment of Housing Boards, their composition to reflect, *inter alia*, the gender composition of South Africa.

Illegal Evictions and Occupation of Land

As per section 26(3) of the Constitution, no one may be subjected to arbitrary evictions or be evicted or have their home demolished without an order of court made after all the relevant circumstances have been considered. The Prevention of Illegal Evictions and the Unlawful Occupation of Land Act accordingly aims to prohibit unlawful evictions and provide for the procedures for the eviction of unlawful occupiers.

The Preamble of the Act expressly notes that special consideration should be given to the rights of certain vulnerable groups of people (ie female heads of household). Ironically, when a state body decides whether it is just and equitable to grant an order for eviction under section 6(3), no specific regard is made for households headed by women despite the fact that female headed households have a 50% higher poverty rate than male headed households.

The Extension of Security of Tenure Act

The Extension of Security of Tenure Act seeks to provide measures with state assistance to facilitate the long term security of land tenure as well as seeking to regulate the conditions of residence on certain land, the conditions and circumstances under which the right of residence may be

terminated as well as the conditions for eviction from land.

The recognition in the Preamble of the Act that many do not have secure tenure of their homes and the land which they use and are therefore vulnerable to unfair evictions is commendable yet incorrectly assumes that vulnerable groups form an homogenous body. Thus, failing to recognise that certain groups (such as female headed households) are more vulnerable and are accordingly in need of special measures to ensure security of tenure.

Termination may take place on any lawful ground, provided that termination is just and equitable, having regard to all relevant circumstances (ie. the interests of female headed households). The Act fails to make reference to the nature of tied housing on farms and the practice of not regarding a woman farm dweller as an occupier in her own right. This practice clearly results in many women farm dwellers being denied the right of access to farm housing.

The Prevention of Family Violence Act

As incidents of domestic violence soar, the implications can be felt on women's rights of access to housing as limited council housing or shelters are available for abused women. Currently a woman may apply for an interdict under section 2(1)(b) of The Extension of Security of Tenure Act enjoining the respondent not to, *inter alia*, enter the matrimonial home, or other place where the applicant is resident. Due to the well-documented shortcomings of issuing an interdict the SALC is considering alternatives such as issuing an exclusion order from the matrimonial home as the way to ensure the effective protection of the applicant. Whatever reforms are put in place it is critical that survivors of domestic violence (women forming the majority) are not deprived of their housing rights or that their housing rights are not compromised when an application for an interdict is being made.

Customary Law

General Proprietary Rights

As discussed in chapter two women are considered to be perpetual minors and are said to lack proprietary capacity. Whilst the actual definition of proprietary incapacity is uncertain, it could refer to the absence of the power to acquire property, the freedom to use and dispose of it or the right to vindicate it. Despite the enactment of section 11 (A) of the

Black Administration Act, which essentially allows women to acquire and dispose of leases and the ownership of immovables, many women still lack proprietary capacity under customary law.

Property Rights on Divorce

The fact that women generally lack proprietary capacity, can result in serious consequences for such women when a marriage is dissolved. For instance, they could lose the property when a marriage ends since their acquisitions have already become part of the husband's estate.

Succession

As discussed in chapter 4 the oldest son inherits the deceased's property. The widows are in a desperate situation when her husband dies as she stands to lose everything she has contributed to the family estate, including her house. Even though she may be maintained by the deceased's estate or sustained via a levirate union with her husband's family she is obliged to remain on good terms with the heir and his family in order to maintain her security as maintenance does not result in ownership of her house or property.

Reform Proposals

The Recognition of Customary Marriages Bill and the Reform of the Customary Law of Succession Bill address some of these issues.

Conclusion

Whilst there is no evidence of direct discrimination in national legislation pertaining to housing, it is clear however that the application of certain provisions does not go far enough so as to ensure substantive gender equality in the housing sphere. It is also clear that social and cultural practices further inhibit the attainment of substantive gender equality in the housing sphere. Rights Commission for the Department of Justice



CHAPTER 7

Commission for Gender Equality (CGE)

The CGE has a national office, three provincial offices and a parliamentary office. Chapter 9 of the Constitution establishes the CGE. Section 187 of the Constitution sets out its functions:

"187(1) The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.

(2) the Commission for Gender Equality has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality..."

Section 18 of the Constitution protects the independence of the Commission and S. 18 (5) requires it to report to Parliament at least annually. The level of funding is not guaranteed, and allocations are made by the Department of Justice with a significant proportion of funding coming from donors. Accounts are audited by the Auditor-General.

As envisaged by s. 187(3) of the Constitution, the composition, powers, and functioning of the CGE are set out in the Commission on Gender Equality Act 1996.

This Act sets out administrative provisions and provisions for the staffing of and appointments to the CGE. Section 10 reinforces the independence of the Commission. Section 11 of the Act further details the functions of the Commission and can be summarised as follows:

- a. to monitor and evaluate policies and practices of government and businesses in order to promote gender equality and making any recommendations on them that the Commission deems necessary;
- b. to run public information and education programmes on gender equality and the role and activities of the Commission;
- c. to evaluate and make recommendations about existing or proposed laws and customs, including indigenous law and practices affecting or likely to affect gender equality or the status of women;
- d. to recommend new legislation to promote gender equality and the status of women;
- e. to liaise with other institutions, bodies or authorities with similar objectives to the Commission and with any organisation which actively pro-

- motes gender equality and other sectors of civil society;
- f. to monitor and report on South Africa's compliance with relevant international instruments; and
- g. a research function.

In addition to the above functions, the Commission has the power under s. 11 of the Commission on Gender Equity Act 1996, to investigate any gender-related issues of its own accord or on receipt of a complaint. Subsection 11(1)(e) of the Act requires the Commission to resolve any dispute or rectify any act or omission by mediation, conciliation or negotiation. However the commission may at any stage refer any matter to the South African Human Rights Commission, the Public Protector (established under Chapter 9 of the Constitution) or any other authority. The Commission is required to liaise with other bodies about the handling of complaints in cases of overlapping jurisdiction.

In conducting these investigations the Commission has a number of powers which are set out in ss. 12 and 13. Significantly, they include the powers to require any person to appear before the Commission, to answer questions and produce articles and documents and to question witnesses under oath. A person required to appear before the Commission or giving evidence under oath, may be legally represented (see s. 12(6)). There is also a power, on the authority of a warrant, to enter and search premises, copy documents and attach and remove articles.

The following are recent examples of some of the work of the Commission:

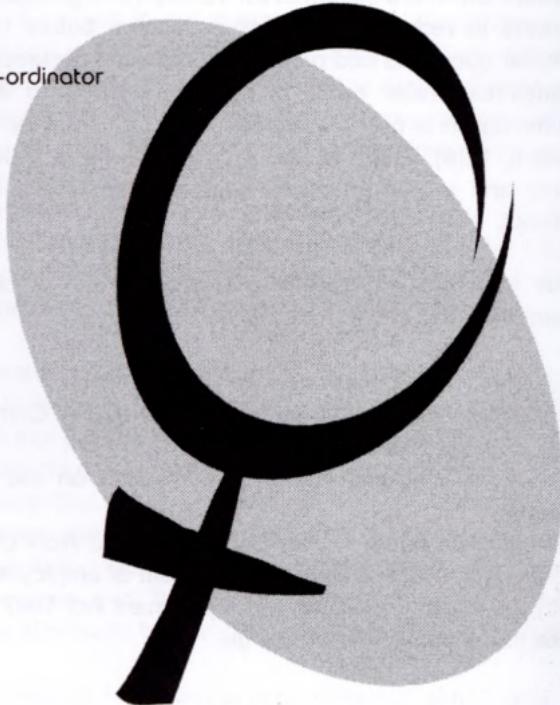
- a. A survey into gender and the private sector.
- b. Gender Opinion Survey undertaken by the Community Agency for Social Enquiry for the Commission.
- c. Audit of Legislation that Discriminates on the Basis of Sex and Gender.
- d. Project on Equal Pay for Equal Work and Work of Equal Value.
- e. Drafting of a standard form contract of employment which complies with the Basic Conditions of Employment Act 1997 that is made available to the public free of charge.

CONCLUSION

FEDUSA has always been pro-active in realising the aspirations of the female worker, not so much in theory, but rather in practice, hence this publication. Through this booklet we endeavour to raise awareness on women worker's rights. We sincerely hope that it will serve as an essential source of information and that it would act as a guide, through which women can empower themselves in order to take their rightful place in society in general, and in the workplace in particular.

We would also like to take the opportunity to acknowledge and thank the International Labour Organisation (ILO) for their support and contribution to the compilation of this booklet. It is indeed heart-warming to know that the ILO is committed to the promotion of gender equality, and so through its policies and strategies enforce the enhancement of the status of women.

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