

**SECURING THE HEALTH AND SAFETY OF VULNERABLE WORKERS: A FOCUS ON
WOMEN WORKERS AND WORKERS WITH DISABILITIES IN THE SUPPLY CHAIN**

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I INTRODUCTION

The protection of workers against sickness, disease and injury arising out of employment is one of the fundamental objectives of the ILO and part of world's commitment for decent work for all.² Such protection is particularly important in developing countries where the health, well being and even survival of families depends on the health of working members of that family. Companies operating in the global economy with global supply chains are increasingly called upon to assume greater responsibility for compliance with international labour standards in their supply chain operations. Securing the right to a safe and healthy workplace is no longer considered only a direct employer's or a government's responsibility. Suppliers, whether they be direct employers or contractors with other employers are facing increasing demands to warrant such right is being met.

This presentation shines a light on the need for occupational health and safety governance to address specifically the issues which arise in securing such rights for workers within the supply chains who face persistent systemic discrimination in all aspects of their lives, including their ability to secure work and the conditions of that work. While such workers include, among others, racialized workers, migrant and immigrant workers, and young and older workers, this presentation focuses on women and workers with disabilities. This presentation provides a broad overview of this issue in order to help frame and assist the discussions and strategies of those charged with securing the occupational health and safety rights of such workers.

Occupational health and safety laws and policy must take into account the highly feminized nature of workers in the global supply chains and the diversity of working populations. Both women and persons with disabilities face multiple and intersecting layers of disadvantage which contribute to their occupational health and safety risks. These include social, physical, psychological and emotional factors and include lack of time, precariousness and low wages. As a result, such vulnerable groups have complex needs and risk factors. This therefore requires a systemic analysis and approach based on accurate data; identification of specific enterprise based, regional and national issues and solutions and an integrated enforcement strategy which moves beyond traditional legalistic enforcement to pro-active measures and prevention.

² See C187 Promotional Framework for Occupational Safety and Health Convention, 2006, see <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C187>.

The challenge for 21st century occupational health and safety governance is to transform such governance so that it can protect the human rights of vulnerable workers wherever they work, including: offices, factories, plantations, homes, and often in the streets.³ Given the many globalized factors which shape the dynamics of discrimination in these various work sites, making occupational health and safety rights real for such workers requires human rights promoting measures to be taken at all levels of the labour market from the international right down to the local enterprise and community.

II LABOUR MARKET CONTEXT

1. Global Supply Chains and Precarious Work

The ILO, UN and academic researchers have detailed the vast differences in world-wide labour market outcomes between mainstream groups and those vulnerable to discrimination, noting that the differences in employment achievements are large and slow to narrow.⁴ The world-wide migration of work and labour is having profound human rights effects not only for the nature and the degree of human rights violations but also for the design of mechanisms which can successfully tackle those violations. Fuelled by international trade and investment practices, the supply chain operations of transnational corporations, and the global information economy, labour markets are being deregulated and state resources and services are being reduced at a time when vulnerable workers require greater protections and services.⁵ With a

³ ILO: *Time for Equality at Work*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report of the Director General, Report 1(B), International Labour Conference, 91st Session, Geneva, 2003

⁴ *Time for Equality at Work*, op cit., pp. 2-3.

⁵ M. Cornish, Closing the Global Gender Pay Gap: Securing Justice for Women's Work, *Journal of Comparative Labour Law & Policy*, April, 2007; H. W. Arthurs: "Labour law without the state", in *The University of Toronto Law Journal* (Toronto, University of Toronto Press), Vol. 46, No. 1, 1996; A. Supiot: "The transformation of work and the future of labour law in Europe: A multidisciplinary perspective", in *International Labour Review* (Geneva, ILO), Vol. 138, 1999; M. Piore and S. Safford: "Changing regimes of workplace governance, shifting axes of social mobilization and the challenge to industrial relations theory", in *Industrial Relations: A Journal Of Economy And Society* (Oxford, Blackwell Synergy), Vol. 45, No. 3, 2006; B. Hepple: "New approaches to international labor regulation", in *Industrial Law Journal* (Oxford, Oxford Law Journal), Vol. 26, 1994; and M. Cornish, F. Faraday and V. Verma, "Securing gender justice: Challenges facing international labour law", in J. Craig and M. Lynk, (eds.): *Globalization and The Future of Labour Law* (Cambridge, Cambridge University Press, 2006).

global trend to informality rather than “decent work,”⁶ formal economy work is also more precarious, with many enterprises having a male-dominated core labour force and a periphery of networked enterprises where workers disadvantaged by factors such as gender, disability increasingly have only a temporary, contract or home-based status.⁷ New export processing zone jobs are often governed by weak labour laws or enforcement.⁸ Some workers have no “employer” at all as self-employment and own account work increases significantly.⁹ Productive decentralization and “flexibilization” are driving the greater “individualization” of labour conditions and limiting the role of workers’ representatives.¹⁰ All of these factors are undermining the ability of state actors and social partners to deliver on the human rights promises found in international and regional human rights standards.¹¹

2. Systemic Gender Discrimination

Women, constituting two thirds of the world’s poor, face widespread systemic gender discrimination.¹² The occupational segregation of men and women is present worldwide and is a

⁶ The ILO “Decent Work” standard requires governments working with social partners to create work that is productive in conditions of freedom, equity, security and human dignity. See *A fair globalization*, op. cit.; and ILO: “Decent work - the heart of social progress”, online at <<http://www.ilo.org/public/english/decent.htm>>.

⁷ J. Fudge and R. Owens: “Precarious work, women and the new economy: The challenge to legal norms”, in J. Fudge and R. Owens, (eds.): *Precarious work, women, and the new economy: The challenge to legal norms* (Oxford, Hart Publishing, 2006); J. Fudge and L. F. Vosko: “Gendered paradoxes and the rise of contingent work: Towards a transformative feminist political economy of the labour market,” in W. Clement and L. Vosko, (eds.): *Changing Canada: Political economy as transformation* (Montreal, McGill-Queen’s University Press, 2003).

⁸ Cornish et al., op. cit.

⁹ Fudge, op cit.; Armstrong and Cornish, op. cit.; and B. Harriss-White: “Inequality at work in the informal economy: Key issues and illustrations”, in *International Labour Review*, Vol. 142, No. 4, 2003

¹⁰ J. Visser: “More holes in the bucket: Twenty years of European integration and organized labour”, in *Comparative Labor Law and Policy Journal* (Champaign, IL, University of Illinois College of Law) , Vol. 26, 2006; and ILO: *Organizing for social justice*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report of the Director General, Report I (B), International Labour Conference, 92nd Session, Geneva, 2004, p. 113.

¹¹ M. Cornish: “Engendering citizenship and labor market regulation – international and Canadian perspectives”, 5th Annual World Bank Gender and Law Conference “Law, Institutions and Gender Equality”, Washington, March 18-19, 2003.

¹² M. Cornish: “Closing the global gender pay gap”, op. cit., p. 4. See *Time for equality at work*, op. cit.; UNIFEM, op. cit.; and Armstrong and Cornish, op. cit.

persistent feature in the global supply chains. Such segregation is both horizontal and vertical. Men and women do different work and few women are found in management or positions of power. Further, women's greater home and community responsibilities; reproductive role, and dominance in low paid, low skilled, part time and precarious work; results in their systemic exclusion from "decent work" where there are likely to be more occupational health and safety protections.¹³

Considering the slow progress made to date in ending such discrimination, engendering the occupational health and safety governance requires more than just enacting better workplace laws. Given the unequal relations of social reproduction, and the often neglected constraints women face as a result of their domestic and child care responsibilities, precarious, unsafe employment is not a free choice.¹⁴ To break women free from the web of socio-economic and political inequalities they face requires a combination of transformative measures directed at every aspect of the discrimination and constraints women face.

3. Systemic Discrimination against Persons with Disabilities

With about 650 million people living with disabilities worldwide, it is estimated more than half are of working age and want to work. The majority acquire their disability during their working lives. Most such persons live in poverty and girls and women with disabilities are at particular risk, both in and outside the home of violence, injury, neglect, maltreatment and exploitation.¹⁵ Of the approximately 400 million disabled people in developing countries, many live in rural areas and live with their families who support them. For many self-employment or home-based employment is the most likely option. People with disabilities suffer from many different mutually reinforcing areas of disadvantage including poverty, social exclusion, marginalization, stereotypes and prejudices

¹³ "Hans-Horst Konkolewsky, "Gender Issues and Diversity in Occupational Health and Safety", Presentation, First Conference of Director Generals, Dublin, April 18-20, 2004, European Agency for Safety and Health at Work".

¹⁴ Cornish and Faraday, op. cit; L. Vosko: "Precarious employment: Towards an improved understanding of labour market insecurity", in L. Vosko (ed.): *Precarious employment : understanding labour market insecurity in Canada* (Montreal and Kingston, McGill-Queen's University Press, 2005).

¹⁵ ILO, Time for Equality at Work, op.cit. See also <http://disabilityworld.org/06-08/employment;..> and Women and Health at Work, European Agency for Health and Safety at Work, <http://www.cseurope.org/csrinfo/csrdisability/disabledemployees/>.

concerning their abilities and lack of accommodation of their differences.¹⁶

The HIV/AIDS epidemic is also vastly increasing the numbers of peoples worldwide with disabilities with 36 million people infected worldwide of whom three quarters are aged 15-49 years and in their “most productive years.”¹⁷ Many of the persons living with HIV/AIDS (PLWHAs) already face social marginalization and systemic human rights abuses because they are women, racial and ethnic minorities, poor, or discriminated against for their sexual orientation.¹⁸ Furthermore, some suffer prejudice and stigma because of their perceived rather than actual status.

In addition women with disabilities tend to be more vulnerable to exploitation of various kinds, such as sexual harassment, domestic violence and exploitation in the workplace. According to the 1995 UNDP Human Development Report, women with disabilities are twice as prone to divorce, separation, violence and sexual exploitation as able-bodied women. Historically, people with disabilities have had tremendous barriers to entering the workforce, and those who became injured and disabled on the job have often faced job loss and its negative psychological, social and financial ramifications. Today, people with disabilities are still under-vastly represented in the world of work.

III. RELEVANT INTERNATIONAL STANDARDS

1. Occupational Health and Safety

At its annual conference in June 2006, the ILO adopted a new Promotional Framework Convention on Occupational Safety and Health and its accompanying Recommendation.¹⁹ This Convention follows from the ILO Global Strategy on Occupational Health and Safety (OSH) enacted in 2003

¹⁶ ILO, *Time for Equality at Work* op.cit

¹⁷ See M. Cornish, *Securing Sustainable Human Rights Justice for Workers*”, Chapter in the ILO forthcoming publication edited by Arturo Bronstein on *Labour Law in the 21st Century* for a discussion of the issue of HIV/AIDS; Vass, op. cit., p. 7;

¹⁸ J. Csete: “HIV/AIDS and human rights: we’ve only just begun”, in *HIV/AIDS Policy and Law Review*, Vol. 10, No.1, 2005, pp.1-2.

¹⁹ See <http://www.ilo.org/public/english/protection/safework/integrap/survindex.htm> for a discussion of the ILO’s Safework strategy and links to the Framework and Recommendation.

and other ILO Conventions in this area, including the Occupational Safety and Health Convention, 1981 (No. 155), and the Occupational Safety and Health Recommendation, 1981 (No. 164). Convention The new Convention also includes a Promotional Framework for OSH.

2. Gender Equality

International law instruments – both global and regional – have evolved over the past 50 years to recognize the systemic and multi-layered nature of women's labour market discrimination. In recognizing the systemic dynamics of discrimination, international instruments such as the Convention on the Elimination of Discrimination against Women and the Beijing Declaration and Platform have become increasingly detailed, requiring national governments and workplace parties to prepare plans and take positive, proactive steps to establish substantive equality, with reporting obligations and mechanisms for external monitoring.²⁰ ILO Convention 100 requires equal pay for work of equal value between men and women's work and Convention 111 on the Right to Non Discrimination and Equal Treatment prohibits discrimination on the basis of sex in all conditions of work.²¹

3. Non Discrimination for Persons with Disabilities

The 2006 UN Convention on the Rights of Peoples with Disabilities opened for signature by Governments in March, 2007 and constitutes a paradigm shift in the approach to this issue by providing a detailed roadmap for implementing a vision of substantive equality for peoples with disabilities – with pro-active obligations to secure equality. Grounded in the reality and perspectives of persons with disabilities, the Convention

- a. recognizes that “disability” is an evolving concept resulting from an interaction between persons with “impairments” and attitudinal and environmental barriers that limit their full and effective participation in society equally with others. These barriers

²⁰ See Cornish et. al, Securing Gender Justice for Women, supra for a review of international gender equality instruments. Also <http://www.un.org/womenwatch/daw/cedaw/> for information on CEDAW.

²¹ See <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>. and <http://www.ilo.org/ilolex/english/convdisp1.htm> for text of these Conventions.

are often imposed by society as a result of misconceptions or prejudices about persons with disabilities and are not grounded in real employment deficits;

- b. provides that disability includes physical, mental, intellectual and sensory impairments;
- c. includes general principles such as respect for inherent dignity, non-discrimination; full and effective participation and inclusion in society; a respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- d. explicitly recognizes the right of persons with disabilities to work on an equal basis with others and enshrines the right to “reasonable accommodation.”²²
- e. provides that persons with disabilities have right to be free from exploitation, violence and abuse, are entitled to respect for their privacy and have full rights to inclusion in all spheres of human life and are entitled to a voice in decision-making.²³

The Convention includes definitions with respect to reasonable accommodation, universal design and other core principles that are the necessary building blocks for developing occupational health and safety policies which are inclusive. The Convention, like the CEDAW Convention, recognizes that redressing the discrimination faced by persons with disabilities requires a multi-faceted, multi-level approach. Article 36 deals with Habilitation and Rehabilitation and Article 27 with employment. Article 5 deals with the right to non-discrimination in employment. The Convention, again like CEDAW also places express pro-active obligations on the State to ensure and promote the full realization of human rights for persons with disabilities and to adopt all appropriate measures, including legislation to secure equality. The State must ensure public authorities and institutions conform with the Convention and take all appropriate measures to eliminate discrimination by

²² M. Lynk: “Disability, discrimination and equality in the global workplace: The challenges for international labour law”, Paper presented at University of Western Ontario Conference on “International Labour Law and the Global Workplace,” London, Ontario, 21 October 2006.

²³ See <http://www.un.org/disabilities/convention/> for the text of the Convention and other information on the Convention.

private organizations.²⁴

The Convention seeks to open up mainstream workplaces to persons with disabilities and promotes access to freely chosen work, general technical and vocational guidance programmes, placement services and vocational and continuing training. The Convention is in line with various existing ILO standards, including the 1983 ILO Convention on Vocational Rehabilitation and Employment of Disabled Persons (No. 159) and the 2004 ILO Human Resources Development Recommendation (No. 195) and 2001 ILO Code of Practice on Managing Disability in the Workplace.²⁵ According to ILO Recommendation No. 168 concerning the vocational rehabilitation and employment of disabled persons, “workers” organizations should adopt a policy for the promotion of training and suitable employment of disabled persons on an equal footing with other workers”. ILO Convention No. 159 concerning the vocational rehabilitation and employment of disabled persons, and Recommendation No. 168 address these rights and duties as well. Convention No. 159 suggests that special positive measures may sometimes be necessary to ensure “effective equality of opportunity and treatment between disabled workers and other workers”. It adds that such measures “shall not be regarded as discriminating against other workers”. Recommendation No. 168 encourages the implementation of specific measures to create job opportunities, such as providing financial support to employers to make reasonable accommodations, and encourages labour organizations to promote such measures and provide advice about making such accommodations.

IV. NEW APPROACHES TO UNDERSTANDING AND PROMOTING THE RIGHTS OF WOMEN AND PERSONS WITH DISABILITIES

The design and effectiveness of mechanisms for securing the occupational health and safety

²⁴ Fay Faraday, “The United Nations Convention on the Rights of Persons with Disabilities: The Impact on Litigation in Canada, Speaking Notes, Prepared for the Canadian Bar Association, International Law Section Audio Conference, April 11, 2007. For information contact ffaraday@cavalluzzo.com

²⁵ See www.ilo.org/employment/disability for further information on these ILO documents and ILO policies and practice. *Managing disability in the workplace*. An ILO Code of Practice. Geneva: International Labour Organization, 2002. ISBN 92-2-111639-5; Barbara Murray and Robert Heron. *Placement of job-seekers with disabilities: Elements of an effective service*. Geneva: International Labour Organization, 2003. ISBN 92-2-115114-X; Barbara Murray and Robert Heron. *Assisting Disabled Persons in Finding Employment. A practical guide*. Geneva: International Labour Organization, 2003. ISBN 92-2-115116-6; Robert Heron. *Job and work analysis. Guidelines on identifying jobs for persons with disabilities*. Geneva: International Labour Organization, 2006. ISBN 92-2-117864-1; and *Trade unions and workers with disabilities: Promoting decent work, combating discrimination*. Geneva: International Labour Organization, 2004. No. 137. ISSN 0378-5467.

rights for women and persons with disabilities should reflect the lessons learned about enforcing human rights which have been developed over many years.²⁶ These lessons have led to new approaches and understandings which are reviewed briefly here:

1. Interconnection of Human Rights with other Rights

Securing the human rights of workers is interconnected with and necessary to sustain all other economic, social, civil and political rights as well as other fundamental labour rights, including freedom of association, the right to collective bargaining and to right to a safe and healthy workplace.²⁷

2. Systemic Discrimination Calls for Systemic Remedies

Starting with the nature of discrimination itself, many laws and policies now recognize that discrimination is systemic and calls for systemic remedies.²⁸ Earlier formal notions of equality which regarded discrimination as an exceptional and individual circumstance requiring intention, have given way to understanding that discrimination is often structural and embedded in economic and work practices and systems which are in turn rooted in prevalent cultural and social practices and prejudices.²⁹ Remediating and preventing discrimination requires a recognition that existing social and legal arrangements have benefitted dominant groups and disadvantaged others due to prejudice and stereotypes. This leads to the need for proactive employment equity or affirmative action measures which seek to restore the balance and transform institutional practices to accommodate differences and the needs of disadvantaged groups.³⁰

²⁶ See full discussion of these new human rights understandings and lessons learned in Mary Cornish, *Securing Sustainable Human Rights Justice for Workers*, op.cit.

²⁷ Cornish et al., op. cit.; and *Time for Equality at Work*, op. cit.;

²⁸ Cornish et al., op. cit.

²⁹ R. S. Abella: *Equality and Employment*, Report of the Royal Commission on Equality in Employment (Ottawa, Canada, Ministry of Supply and Services, 1984).

³⁰ See *CNR v. Canada (Human Rights Commission)* (1987) 1 S.C.R. 1114 ; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* [1999] 3 S.C.R. 3.

3. Intersectional Approach

As workers often face multiple and overlapping grounds of discrimination, an intersectional approach is necessary which recognizes the diversity within vulnerable groups.³¹ For example, the experiences of exclusion and mistreatment of an immigrant ethnic minority woman will be different from the experience of a white woman or an ethnic minority man and enforcement measures must recognize this difference to be effective.³²

4. Mapping and Planning Approach

Given the diversity of human rights violations and experiences, effective governance must start with an accurate picture or “mapping” of the specific human rights issues facing vulnerable groups.³³ This is done through the collection of dis-aggregated quantitative and qualitative data and the development of progress measures. Mapping serves a number of functions: 1) by making visible discriminatory actions and their impacts, it shines a light on wrongful practices; empowers the vulnerable to seek redress and reduces their stigma; 2) it provides an informed foundational basis for designing effective strategies to address different circumstances; and 3) it facilitates monitoring progress in discrimination reduction and the effectiveness of interventions.³⁴ Successful mapping requires accurate data and definitions which can be a constant challenge, particularly in developing countries where resources are scarce and capacity

³¹ T. Makkonen: *Multiple, compound and intersectional discrimination: Bringing the experiences of the most marginalized to the fore* (Institute for Human Rights, Abo Academi University, 2002).

³² *Canada (A.G.) v. Mossop* [1993] 1 S.C.R. 554, at 645-646; Ontario Human Rights Commission: “An Intersectional approach to discrimination: Addressing multiple grounds in human rights claims”, Discussion paper, available at <http://www.ohrc.on.ca>.

³³ Saskia Sassen has highlighted the importance of recovering the role and value of women’s work in economic processes at the local, national and global level through “mapping” such work. See S. Sassen: “Women’s burden: Counter-geographies of globalization and the feminization of survival”, in *Nordic Journal of International Law* (Leiden, Brill), Vol. 71, No. 2, 2002. Colleen Sheppard argues by mapping, the relationship between legal concepts and socio-economic phenomenon can be examined. See C. Sheppard: “Mapping anti-discrimination law onto inequality at work”, Prepared for University of Western Ontario Conference on “International Labour Law and the Global Workplace,” 20-21 October 2006 (London, Ontario).

³⁴ M. Cornish: “Closing the global gender pay gap: Securing justice for women’s work”, forthcoming in *Comparative Labor Law and Policy Journal*, spring 2007.

may be weak. Once issues are mapped, effective development of targeted plans can implement progressive measures to reduce discrimination and promote compliance over a reasonable time frame.

5. Requirement for Mainstreaming

Given that discrimination is so deeply entrenched in all aspects of the labour market exchange, promoting the rights of disadvantaged workers requires a combination of transformative laws, human rights promoting institutions and supportive policy measures to address these aspects simultaneously. The 1995 Beijing Declaration and Platform for Action adopted “gender mainstreaming” and the use of national gender equality plans as key tools for addressing systematically the needs and conditions of women.³⁵ The 2006 UN Convention on the Rights of Persons with Disabilities also seeks to mainstream the concerns and interests of such persons in societal and workplace decision-making. Based on a data-based mapping of the nature and conditions of work facing vulnerable workers and most importantly relying on the empowered voice of such workers and the organizations representing them, international, regional, national and enterprise level plans can provide the needed multi-layered strategies.

6. Requirement for Inclusive Workplace Standards

Employers have the obligation to develop standards and practices which are inclusive of all rather than developing standards based on the male or able-bodied worker.³⁶

7. Human Rights Enforcement is Not Optional

Securing the human rights of workers is a mandatory obligation, reinforced by international, regional, national and local laws and standards. Steps must be taken to ensure the progressive realization of those rights.

³⁵ Cornish et al., op. cit.

³⁶ See *CNR v. Canada (Human Rights Commission)* (1987) 1 S.C.R. 1114 ; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU* [1999] 3 S.C.R. 3.

In summary, there is a need to mainstream gender, disability and other human rights issues into occupational health and safety governance, at the same time as mainstreaming occupational health and safety issues into workplace governance generally.

V. OCCUPATIONAL HEALTH AND SAFETY

1. Supply Chain Context

With the production, distribution and consumption of products globally interconnected through supply or commodity chains, the occupational health and safety conditions which women and workers with disabilities face in those production chains is often driven by the production imperatives of the national and transnational firms upstream in the chain. Global buyers such as Nike, GAP and Wal-Mart drive not only what is produced in these chains but also how and under what conditions it is produced.

While these chains produce significant employment opportunities for these vulnerable workers, these networks of labor and production processes are often structured to depend upon “insecure” forms of employment driven by competitive cost-cutting.³⁷ In these circumstances, occupational health and safety is often sacrificed to cost-cutting and production time constraints. For example, predominantly female harvesters on East African flower farms have been compelled to pick flowers at the same time as spraying is taking place in order to expedite the export of the flowers, without being given any protective clothing or advice on how to protect themselves in such a hazardous environment.³⁸

Many workers supplying the global chains are now home-based or self-employed. Micro and small enterprise manufacturing and artisanal clusters are becoming a more significant part of the global supply chains but such workers do not receive the benefits of the larger enterprises in that chain. As work is often provided on an informal subcontracting basis, these enterprises are at the bottom

³⁷ Catherine S. Dolan, “On Farm and Packhouse: Employment at the Bottom of the Global Value Chain” *Rural Sociology*, 69(1), 2004, pp. 99-126.

³⁸ Women Working Worldwide: *Promoting Women Workers’ Rights in African Horticulture*, see <http://www.poptel.org.uk/women-ww/bulletin2.pdf>.

of the global supply chain. Generally the further down the chain you go, the more likely the workers are women or members of other marginalized groups. As a result, working conditions are often very poor with significant occupational health and safety risks and likelihood that if workers were not disabled when they started work, they will soon develop occupational disabilities.

2. Discrimination and Occupational Health and Safety

The workplace environment includes both the physical and bio-mechanical environment, the psycho-social environment and health practices. Given that discriminatory attitudes and prejudices and socio-economic restraints impact on this environment in complex and specific ways depending on the particular workplace and regional or country context, there is a need for an integrated and comprehensive approach. As with many other issues, there is much less attention paid in the research to the addressing the health and safety of women and persons with disabilities than of more privileged male or able bodied workers.³⁹ Studies often do not collect or analyze data based on gender or disability. By often treating occupational health and safety risks as generic without sufficient differentiation, the needs of workers such as women or workers with disabilities which are “different” are most often invisible and ignored.⁴⁰ For example, a study of European workers showed that men’s work risks, particularly in accidents are more visible than the “ill health” women experience. Given that women and persons with disabilities are often excluded from decision-making; are intimidated from participating or have too little time to do so, they have little or no influence in occupational health and safety standard setting. As such the risks facing women and persons with disabilities are often underestimated or misunderstood and no plan is made to address them. For example, assumptions are often made that women are not doing heavy work or facing risks and therefore do not need training or protective equipment. Persons with disabilities may be unreasonably excluded from some work which they can do based on prejudices about their capabilities but then exposed to other health risks because of the failure to provide reasonable accommodation.

³⁹ “Karen Messing and Jeanne Stellman, “Sex, Gender and Women’s Occupational Health: The Importance of Considering Mechanism”, see messing.karen@uqam.ca.

⁴⁰ “Hans-Horst Konkolewsky, “Gender Issues and Diversity in Occupational Health and Safety”, Presentation, First Conference of Director Generals, Dublin, April 18-20, 2004, European Agency for Safety and Health at Work”.

3. Women and Occupational Health and Safety

Making work accessible to both men and women with no discrimination requires employers and unions to establish occupational health and safety rules which take into account diversity among employees related to both biological and gender differences.⁴¹ As scholars have documented, the struggle of women for safe and equal integration into the workplace must address both the biological differences between men and women and the reality of job/worker interactions.⁴² While there is some research which documents the special occupational hazards of women workers, including stress, workplace violence, reproductive hazards, and impact of new technologies, this research is not widely used to inform occupational health rules and policies.⁴³ In a recent important work, gender experts in various work fields have called for the direct consideration of women and men's biological differences in order to ensure that the workplace is "adapted to the physical dimensions and capacities of both sexes."⁴⁴ Without such adaptation or accommodation, there are risks to women's health and adverse consequences for women's employment.

Workplaces have been designed historically primarily for male and able bodied workers. Even traditionally female workplaces often do not make the necessary accommodations for female workers. Workers are often screened only for male job skills. Female job requirements such as multi-tasking or flexibility are not tested for.⁴⁵ Gender-based stereotypes and prejudices also create risks. 1) women's physical capacities (size, shape and strength) are considered to make them not as fit for "men's" work; 2) women's occupational illnesses may be considered to be related to physical or psychological capacities, rather than to their working conditions; 3) women's

⁴¹ Karen Messing and Piroska Ostlin, "Gender Equality, Work and Health: A Review of the Evidence" World Health Organization, 2006.

⁴² Karen Messing, Katherine Lippel, Diane Demers, and Donna Mergler, "Equality and Difference in the Workplace: Physical Job Demands, Occupational Illnesses and Sex Differences", 2000 *NWSA Journal* Vol. 12, No. 3 (Fall), 21.

⁴³ See Valentina Forastieri, "Information Note on Women Workers and Gender Issues on Occupational Safety and Health" International Labour Office, Geneva, 2000, <http://www.ilo.org/public/english/protection/safework/gender/womenwk/htm>

⁴⁴ Messing, Lippel, Demers, and Mergler, *supra*.

⁴⁵ Messing, Lippel, Demers, and Mergler, *supra*. p. 26.

reproductive role renders them unfit to work, making it risky and expensive to hire women.⁴⁶ These concerns often lead to a reluctance to hire women, to accommodate the workplace for their needs, or to compensate them for workplace injury and include them in prevention programmes.⁴⁷ Research has shown a systemic gender bias in the compensation of women for musculo-skeletal disorders.⁴⁸

Women, who work in different jobs from men face different risks and have different needs which must be specifically addressed in OHS strategies and plans: 1) Women in their fertile years are susceptible to specific adverse reproductive effects; 2) they often suffer from muscular-skeletal disorders because neither equipment and tasks, usually designed for male workers are not adapted to their build; and 3) they are vulnerable to stress-related disorders resulting from discriminatory workplace practices and the double burden of work and family/community commitments.⁴⁹

4. Occupational Health and Safety and Persons with Disabilities

In order for people with disabilities to become fully integrated in the workplace, they must first have equal access to community and employment resources that predispose and assist people to work (education and training opportunities, social services, etc.) and that give them access to the work environment (accessible housing, transportation, information, etc.). Many labour unions have recognized that people with disabilities are not able to participate in the workplace if they are excluded from full participation in community life. Further, once employed, people with disabilities may need special services and accommodations to be fully integrated and to maintain job performance with risk of injury or exposure to illness. The obligation of reasonable accommodation

⁴⁶ Messing, Lippel, Demers, and Mergler, *supra*. p. 21

⁴⁷ Messing, Lippel, Demers, and Mergler, *supra*. p. 21-2.

⁴⁸ Katherine Lippel, "Compensation for Musculo-Skeletal Disorders in Quebec: Systemic Discrimination Against Women Workers, *International Journal of Health Services*, (2003), 33(2) 253-282 and Katherine Lippel, "Workers Compensation and Stress: Gender and Access to Compensation, *International Journal of Law and Psychiatry*, 1999, 22(1): 79-89.

⁴⁹ See European Agency for Health and Safety at Work: http://europe.osha.eu.int/good_practice/person/gender/; Valentina Forestiere, Information Note on Women Workers and Gender Issues on Occupational Health, International Labour Office, Geneva, <http://www.ilo.org/public/english/protection/safework/gender/womenwk.htm#key>; and *Gender, Health and Work*, World Health Organization, 2004. http://www.who.int/gender/other_health/Gender,HealthandWorklast.pdf

required in the new UN Convention on the Rights of Persons with Disabilities provides an important standard for requiring occupational health and safety strategies to be based on an informed understanding of the nature of any disability, its limitations and the measures which can be taken to permit the full inclusion of a person with such a disability in the workplace.

5. Workplace Violence and Harassment

Workplace violence and harassment exists everywhere in the world in both the formal and informal economy and is a persistent feature of precarious employment, and particularly affects women and workers with disabilities. The recent ILO publication, *Violence at Work* reveals “a grim panorama of millions of workers all over the world suffering a variety of physical, mental and emotional harms” which too often “result in despair, illness, injury and death”.⁵⁰ This includes rape, stalking and murder. The report concludes that victims of such violence generally tend to be the powerless and vulnerability “lies at the root of a great deal of violence at work”. They note that the drivers of workplace violence are very complex and woven into the specific social, organizational and economic fabric of workplace culture.⁵¹ Most workplace violence can be characterized as “hidden” violence, as it is often committed behind closed doors by colleagues or clients who are known to the person.

VI. DEVELOPING INCLUSIVE OCCUPATIONAL HEALTH AND SAFETY PLANS

This section sets out some of the considerations involved in developing occupational health and safety plans which are inclusive of vulnerable groups.

1. Mapping and Planning

An inclusive approach must be based on mapping and making visible the layers of various risks to which women and persons with disabilities are exposed in the supply chains. Once those risks

⁵⁰ Duncan Campbell and Vittorio Di Martino, *Violence at Work*, Third Edition, Geneva, International Labour Office, 2006 ISBN 978-92-2-117948-1.

⁵¹ “Taming the Beast: A Look at the Many Forms and Guises of Workplace Violence”, *World of Work*, ILO Magazine, International Labour Office, Geneva, No. 56, April, 2006 at 25.

are identified, then targeted and planned actions can address those issues. The ILO 2006 Promotional Framework Convention on Occupational Health and Safety calls for members to develop national plans and policy to achieve progressively a safe and healthy working environment for workers. This includes implementing the basic principles which include: assessing occupational risks or hazards; combating occupational risks or hazards at source; and developing a national preventative safety and health culture that includes information, consultation and training.

2. Proactive Steps Required

Given the precarious and often powerless situation of women workers and workers with disabilities, proactive steps must be taken to provide them with necessary safety equipment and information on practices and procedures that reduce risk of injury or illness due to exposure to hazardous conditions, repetitive motions or other stressors. Relying on workers to complain in order to obtain safe conditions is an undue burden on already vulnerable groups.

3. Training

It is critical to train responsible persons to be able to investigate, identify and resolve occupational health and safety issues facing women and persons with disabilities. There is need to develop programs that enlighten women and persons with disabilities about their rights in the workplace.

4. Consultation and Empowerment

Workplace consultation mechanisms must include the perspectives of women and persons with disabilities and their organizations. Recognition that there are barriers in many workplaces to the effective implementation of official procedures requires analysis of the personal and power politics in workplaces and broader societal relationships. Thus, while policies and guidelines for the prevention of workplace violence might exist, they will not be effective until women are able to take the issues up.

5. Gender and Disability Sensitive Workplace Policies

When gender or disability are incorporated in analyses of workplace issues, important concerns

of these vulnerable groups are revealed, which are often otherwise ignored and can be addressed in policies.

For example, in the case of workplace violence, it is determined that: 1) women have difficulty in labelling their experiences as violence and harassment; occupational health and safety research has often viewed women's work as safe work; men are more likely to be the perpetrators of violence against women in the workplace (although women also perpetrate violence against other women); and family violence can intrude into the victim's workplace. As well, specific groups of women - immigrant women, Indigenous women and lesbians - are more susceptible to violence in the workplace. For these women, a broader context of racism, discrimination and disadvantage in access to work and to career advancement underlies the experience of violence, harassment or unsafe working conditions. For younger women, problems such as sexual harassment can be particularly difficult to address, because this may mean addressing it with an older man who may hold considerably more power in the community as well as the workplace.

6. Responding to the needs of workers with disabilities

Workers have a right to the safest work environment possible and to the complete disclosure about risks and working conditions. Such knowledge is especially important to workers with disabilities who may need knowledge of certain conditions to determine whether they can perform the job functions without jeopardizing their health and safety or that of others. Many jobs involve risks or dangers that cannot be fully removed. For example, agricultural jobs or those that deal with exposure to toxic substances have obvious, inherent risks. Other jobs, like data entry or sewing machine operator, while relatively safe, also have repetitive motions or improper body mechanics can lead to disabilities. These risks can also be reduced.

VII SOME GOOD PRACTICES

1. Human Rights Sensitive Codes of Conduct

An excellent example of the difference resulting from a focused attention to women and gender equality are the Calvert Women's Principles. In June, 2004, Calvert, in partnership with the United Nations Global Fund for Women (UNIFEM), launched these Principles which were the first global

code of corporate conduct focused exclusively on empowering, advancing, and investing in women worldwide.⁵² These Principles specifically requires that “corporations promote and strive to attain gender equality by adopting and implementing policies to secure the health and safety and well being of women workers.” In this regard, companies agree to take all reasonable steps to:

- a. Ensure that women's health and safety, including reproductive health, are protected in the workplace.
- b. Prohibit and prevent all forms of violence in the workplace, including physical, sexual or verbal harassment, and have well-publicized procedures for reporting and responding to the same.
- c. Ensure the safety of female employees and vendors in the workplace, in travel to and from the workplace and on company-related business.
- d. Strive to eliminate unsafe working conditions and provide protection from exposure to hazardous or toxic chemicals in the workplace, particularly when those substances have known or suspected adverse effects on the health of women and children. In addition to these steps, provide full disclosure of possible hazards, and obtain prior informed consent from women who may be exposed to such substances in the workplace.
- e. Prohibit discrimination against women with health problems, including individuals with AIDS/HIV positive status.
- f. Allow time off from work for women employees seeking medical care or treatment, including family planning, counseling and reproductive health care.
- g. Provide and make readily accessible information on domestic violence with information about available local resources.
- h. Provide and make readily accessible information on reproductive health care with information about available local resources.

2. The Global Business Coalition on HIV/AIDS, Tuberculosis and Malaria

Founded in 2001, the Global Business Coalition on HIV/AIDS, Tuberculosis and Malaria (GBC) has spent the past five years developing a rapidly expanding alliance of over 200 international

⁵² See <http://www.calvert.com/womensPrinciples.html> for further information and full text of the Principles.

companies dedicated to combating the AIDS epidemic through the business sector's specific skills and expertise. GBC's four main goals facilitate its mission to harness the power of the global business community to end the HIV/AIDS, tuberculosis, and malaria epidemics: 1) Increase the number and diversity of companies committed to fighting global epidemics by engaging new businesses to join its extensive network of member companies. 2) Increase business action against HIV/AIDS, TB, and malaria, and improve the quality and reach of company and community programs. By leveraging their existing skills, products and networks, companies are encouraged to respond to pandemics in myriad ways; GBC's Business AIDS Methodology (BAM)TM enables each individual member company to develop an appropriate custom-made HIV/AIDS business plan and strategy, and its Best Practice AIDS Standard (BPAS)TM allows confidential monitoring and evaluation. The organization facilitates this goal by fostering unique partnerships with NGOs, governments and civil society.

3. EOHSBI Project - Gender Focus Strategy and Gender Sensitive Occupational Health and Safety Checklist

EOHSBI is an important example of a project developed by a Brazilian-Canadian partnership, funded by the CIDA-ABC Transfer of Technology Fund for Brazil. The purpose of the project is to strengthen the capacity of small and medium-sized enterprises (SMEs) in selected sectors in the participating Brazilian states for integrating workplace health and safety into their organizational culture, performance goals and management systems, and to reduce illnesses, injuries and fatalities for all employees. Further, the project aims to enhance the capacity of participating industries and their SESI Occupational Health Departments to effectively address challenges in the development, implementation, management and evaluation of OHS services and programs for all workplace participants.⁵³ The project developed a specific gender focus which included the preparation of a gender resource website which includes materials on conducting a gender-based analysis in the area of occupational health and safety.

The EOHSBI Gender Strategy specific aims are:

- a. Gender mainstreaming: to highlight the representation and visibility of women and

⁵³ See <http://www.ohsbrazil.ca> for more detailed information concerning the project.

men

- b. Attention to diversity and local context: to emphasize the diversity of women and men, particularly as pertaining to race and regional differences
- c. Changing access, resources and benefits: to incorporate in the analysis systemic barriers (supports to participation, education and outreach) aiming at changes in the short and medium term
- d. promoting inclusivity: to use processes and methods that promote stakeholder engagement, consultation and participation;
- e. Evidence based: to place particular attention on collecting data that is disaggregated by sex and race, and on using quantitative and qualitative approaches to building the Project gender arguments and interventions
- f. Education and empowerment around gender issues: to focus on central issues such as sexual harassment, balance between work and home life, equal remuneration for work of equal value, and role of men and boys. ⁵⁴

The Gender Sensitive Occupational Health and Safety Checklist provides as follows: ⁵⁵

“This set of questions is designed to help users start thinking about the ways in which gender and other social factors that structure life may affect the experiences and opportunities of workers, and about the gender-specific hazards workers may face.

- g. Pay discrimination/pay equity:
 - i. Pay levels, opportunities, systems, pay and grading structures, evaluations of jobs, access to benefits;

⁵⁴ See http://www.ohsbrazil.ca/gender/3_integrate/index.html

⁵⁵ See <http://www.ohsbrazil.ca/gender/index.html>.

- ii. What is the relationship between gender and pay in the company/industry? What might be some of the reasons for this? Are there gender-related (time-related, culturally-related, racially related) constraints that may affect the gender-pay relationship?
- h. Gender Segregation
- i. Access to/nature of training, recruitment, promotion, job definitions and qualifications, work organization, restrictions on women working;
 - ii. Does the company/industry tend to hire one gender more than the other (for particular jobs)? Why or why not? How are jobs advertised? Might this affect which gender applies? Might other factors affect the gender of applicants and workers? Do gender segregated jobs have specific hazards or health issues?
 - iii. Who has/does not have access to training programs? Why? Who takes advantage of training programs? Why? How might these patterns of access affect individual and overall workplace health and safety?
- i. Job access/job security
- i. Redundancy, termination, security of hours, contractual status;
 - ii. Who does which jobs? Why? What are the health and safety factors associated with each job? Is there a gender difference in level of job security? Why?
 - iii. How do pregnancy and parenthood affect job security and job access?"⁵⁶

⁵⁶ Checklist adapted from: Gender issues in safety and health at work - a review, Women and Health at Work. European Agency for Health and Safety at Work, 2003 http://europe.osha.eu.int/good_practice/person/gender/links.php and International Labor Organization (ILO) - Gender Site <http://www.ilo.org/dyn/gender/>

4. Some Suggestions for Creating a Workplace inclusive of Persons with Disabilities

The following steps have been suggested

- a. Get advice from organizations representing persons with disabilities and those specializing in disability employment;
- b. think about everything from start to finish—from getting persons with disabilities to the interview to determining how to adjust to all aspects of the job;
- c. where possible, adjust physical features of premises; reallocate work within a team where necessary to permit accommodation;
- d. Find suitable alternative work for someone who has become disabled Be flexible—for example, by allowing someone to have different core working hours and to be away for rehabilitation;
- e. Provide training and modified equipment for disabled employees;
- f. make instructions and manuals more accessible;
- g. provide training about disabilities for other staff
- h. develop partnerships with unions and organizations representing persons with disabilities in order to sustain the full integration of people with disabilities in the workplace and community.