

SECURING GENDER JUSTICE: THE CHALLENGES FACING INTERNATIONAL LABOUR LAW

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Introduction

Widespread gender inequality continues to be entrenched in global labour markets notwithstanding the positive gains women have made and the existence of international norms and legal obligations which prohibit such discrimination. The international labour law system, originally developed based on the male model of “standard” employment”, is now evolving to address the protection of women’s work. This includes addressing the shift to the new “feminized” global economy where women’s jobs are often precarious, substandard and low wage, where many women have no formal job at all, and where women continue to bear the many burdens of family and community responsibilities.¹

The international labour law system has been fundamentally challenged by the forces of globalization which seek to move large volumes of goods, services, information and capital across international borders with low friction and high velocity.² Workers’, and particularly women workers’ rights stand in the way of this global whirlwind as labour lacks capital’s mobility advantage and is subject to the threat of global capital moving to regions with lower standards. The international business community has had significant success in requiring nation states to ease, not legislate or not enforce labour and equality protections so as to attract and retain transnational companies and permit local businesses to compete in the global production system. The result has been structural adjustment programmes, privatization of state services, anti-collective bargaining laws and business-friendly export processing zones. As stated in a UN report, “economic systems which value profits, often do so at the expense of female labour.”³ Yet for poor women, their greatest asset is their labour. The international equality seeking community, including the UN, ILO, trade unions and NGOs have spent many years working to develop effective instruments and measures to meet this global equality crisis. While developing and obtaining signatories to

¹ M. Cornish, “Engendering Citizenship and Labor Market Regulation – International and Canadian Perspectives”, (5th Annual World Bank Gender and Law Conference, World Bank, Washington, 18-19 March, 2003) at 3-5. [hereinafter, “Cornish”].

² Arthurs, Harry, “Reinventing Labor Law for the Global Economy: The Benjamin Aron Lecture” (2001) 22(2) Berkeley Journal of Employment and Labour Law at 273.

³ See “Preliminary Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences” cited in C. Chinkin “Canada Women’s Continued Economic Inequality” (2001) Gender and Globalization, UN Chronicle, online: Global Policy Forum <<http://www.globalpolicy.org/socecon/inequal/0221.htm>> “A Fair Globalization: Creating Opportunities for All”, Report of the World Commission on the Social Dimension of Globalization, Geneva, ILO, 2004 at 46-47 (hereinafter “Fair Globalization”).

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international equality instruments is an important part of building an engendered labour law system, the challenge is to implement those instruments so that they offer real protection to women in this globalized context.

Part 1 of this paper summarizes the current world-wide gendered patterns of inequality and female poverty which must be addressed by an engendered labour law framework. Part 2 reviews the current formal international labour law framework in the area of gender discrimination including key ILO, UN and regional instruments. Part 3 distills from these instruments the key gender equality standards and principles which represent the international consensus on the obligations of state actors and social partners. Part 4 identifies the key issues which must be addressed by policy makers, legislators and civil society in order to transform labour markets. It also reviews some of the lessons learned in this process and some examples of good practices which are starting to deliver on the gender justice promised by these international standards.

Part 1: Women's Labour – The Context of Global Inequality

The global labour market for women has been marked by five significant trends that, while displaying some progress in women's share of both jobs and wages, demonstrate the persistent systemic gaps that exist between men and women across the spectrum of employment rights and benefits. These five trends are (a) women's increased participation in the labour force; (b) women's modest gains in remuneration; (c) the continuing occupational segregation and income gaps between male and female workers; (d) women's continuing struggle to reconcile employment and family responsibilities; and (e) women's concentration in the informal economy. Industrialized and developing countries alike share these trends, although the burden of inequality falls greatest on women workers where poverty, the informal economy, weak employment regulation, racial and ethnic discrimination and violence are most pronounced.⁴ So, while there has been improved equality, quantitatively, in women's global labour market participation, this has yet to yield true socio-economic equality and empowerment for women.⁵

Women's increased participation in the labour force

Over the last twenty years, women world-wide have increased their share of non-agricultural labour market employment, a shift which has been linked to an expansion in export-led industrial development associated with globalization.⁶ While the female share

⁴ Cornish, *supra* note 1 at 3-5 and Fair Globalization, *supra*, note 3 at 47.

⁵ ILO, *Global Employment Trends for Women 2004* (Geneva, ILO, 2004) at 1 [hereinafter, "Global Employment Trends for Women"]. See also UNIFEM, *Progress of the World's Women: UNIFEM Biennial Report*, UN IFEMOR, 2002, 0-91291770-9 [hereinafter, "Progress of Women 2002"], and *Time for Equality at Work: Report of the ILO Director General*, UN ILOOR, 2003, Report 1B, 92-2-112871-7 [hereinafter "Time for Equality"] and Fair Globalization, *supra*, note 3 at 48.

⁶ See "Progress of Women 2002", *ibid* at 30.

of wage employment continues to grow gradually in most economically healthy countries,⁷ employment levels approach parity with that of men in less than half the countries for which data is available.⁸ While in the transition economies 91 women are economically active for every 100 men, and in East Asia the ratio is 83:100, in the Middle East, North Africa and South Asia, for every 100 men employed, only about 40 women are economically active.⁹

Women's Wages Improving Gradually

The past twenty years have also seen an improvement in women's average monthly wage in the vast majority of 63 countries with available figures, although by 1998-1999 none of these countries had yet achieved equal average wages.¹⁰ While progress to equality in wages has been very uneven, it has extended beyond OECD countries and into the developing world: selected Latin American states, for example, have shown anywhere from 1% (Ecuador) to 19% (Paraguay) gains in women's average income in non-agricultural sectors relative to men's between the early and late nineties.¹¹

Continuing Occupational Segregation of Women and Men

While these first two trends reveal some progress, they also obscure the pervasive, world-wide trends concerning the nature and quality of women's labour force participation and the extent and persistence of prevailing wage gaps in the wake of market integration and globalization.¹² The inequality facing the world's women is still staggeringly widespread and systemic. Women represent 60 percent of the world's 550 million working poor.¹³

Within both the formal and informal economy, the occupational segregation of men and women by gender continues worldwide with men dominating higher-paying "production" jobs and women dominating lower-paying "caregiving" or "home-based" jobs. Studies show that low pay and flexibility are associated with typically "female" occupations primarily because they are "female".¹⁴ At the same time, women are also excluded from "male"

⁷ The Female employment share is rising throughout the developed world, the Caribbean, and Latin America, Asian countries have experienced only moderate increases as women were most affected by the late 90's financial crisis. Both women and men show losses in transition economies and Sub-Saharan Africa. See International Labour Conference. See "Time for Equality", *supra* note 5 at 41.

⁸ "Progress of the World's Women", *supra* note 5 at 30. See also Cornish, *supra* note 1 at 3-5.

⁹ "Global Employment Trends for Women", *supra* note 5 at Table 2.1

¹⁰ See *Progress of the World's Women: UNIFEM Biennial Report*, UN IFEMOR, 2000 at 92 [hereinafter, "Progress of Women 2000"].

¹¹ "Time for Equality", *supra* note 5 at 54.

¹² Note that in some countries indicators which point to a reduction in the gender wage gap are the result of the pushing down of men's wages rather than increase in women's wages. See "Progress of Women 2002", *supra* note 5 at 37. See generally Cornish, *supra* note 1 at 3.

¹³ "Global Employment Trends for Women 2004", *supra* note 5 at 15.

¹⁴ K. Ruwanpura, "Quality of Women's Employment: A Focus on the South" (2004) Decent Work Research Programme, International Institute for Labour Studies at 10-12 online: International Institute for Labour Studies <<http://www.ilo.org/public/english/bureau/inst/research/crbien.htm>> [hereinafter "Ruwanpura"]; and R. Anker, 1997. "Theories of Occupational Segregation by Sex: An Overview, International Labour Review.

occupations because of the human capital discrimination they face given their unequal access to education.¹⁵ This gendered job segregation, stereotyping and undervaluation of women's work underpins the world-wide gender order with men's work considered superior economically, socially and legally.¹⁶

Women's full integration into the labour market continues to be resisted and surrounded by patriarchal stereotypes, prejudices, misconceptions and culturally-based expectations about gender roles and what constitutes "valuable work".¹⁷ The rising importance of religious fundamentalism has also contributed to reassertion of traditional women's roles.¹⁸ These powerful gendered perceptions of women's inferior status persist even though the international community recognizes formally that gender inequality tends to lower labour productivity, intensify the unequal distribution of resources and contribute to the non-monetary aspects of poverty – lack of security, opportunity and empowerment.¹⁹ Women and girls still bear the largest and most direct costs of these inequalities which inhibit sustainable development and global poverty reduction.²⁰

The Challenge of Reconciling Employment and Family Responsibilities

Further compounding these disadvantages are the challenges women face in continuing to bear the double burden of balancing the demands of paid work and those of "unpaid care work" in sustaining families and communities. Domestic and child care responsibilities involved in social reproduction continue to be borne overwhelmingly by women and this impacts on the economic choices that are available to women and the choices women make which lead to "contingent" work.²¹ The extent to which women suffer from a "time poverty"²² caused by their many responsibilities is greatly exacerbated as women are forced to take on added domestic obligations as states roll back, privatize and eliminate public services, as the population ages, as global poverty increases, and as HIV/AIDS rises internationally.²³

¹⁵ Ruwanpura, *ibid* at 10.

¹⁶ Ruwanpura, *ibid* at 5-6.

¹⁷ See generally Cornish, *supra* note 1 at 3-4. See generally "Time for Equality", *supra* note 5 at 47-54. Women are also denied access to men's work because of the different "human capital" they bring to the labour market. For example, women outnumber men 2-to-1 among the world's 900 million illiterates. See "Progress of Women 2002", *supra* note 5 at 21.

¹⁸ See A. Obando, "Women Facing Globalization: The Impact of Neo-Liberal Globalization on the Economic, Social and Cultural Rights of Women" (2003) Issues, WHRnet online: Women's Human Rights Net <<http://www.whmet.org/docs/issue-globalisation.html>>

¹⁹ See World Bank Gender and Development Group, *Gender Equality and the Millennium Development Goals* (Washington, World Bank, 2002) at 1.

²⁰ "Progress of Women 2002", *supra* note 5 at 21. See generally Cornish, *supra* note 1 at 4.

²¹ Ruwanpura, *supra* note 14 at 5 and 22. See Cornish, *supra* note 1 at 4; and J. Fudge, and L. Vosko, "Gender Paradoxes and the Rise of Contingent Work: Towards a Transformative Political Economy of the Labour Market", in Wallace Clement and Leah Vosko (Eds) *Changing Canada: Political Economy as Transformation* Montreal and Kingston McGill - Queen's University Press at 202-203 [hereinafter "Gender Paradoxes"].

²² See "Progress of Women 2002", *supra* note 5 at 60. See also United Nations, *The World's Women 2000: Trends and Statistics* (New York: UN, 2000).

²³ See "Progress of Women 2002", *supra* note 5 at 58-9. For example, Women in Eastern Europe and Central Asia, work an average of 70-hours a week. Cornish, *supra* note 1 at 4.

Women's Concentration in the Informal Economy

Although women's labour force participation has increased, this growth has come largely in the informal economy through self-employment, part-time employment, casual and temporary employment and home-based low income work.²⁴ Relative to work in the standard economy, work in the informal economy is highly vulnerable, with very low pay and irregular income, is excluded from legal and regulatory frameworks and therefore lacks access to employee and social security benefits.²⁵ Women in the informal sector have less property and fewer assets; are largely under-compensated; are prevented from obtaining the necessary credit to sustain themselves and their families; and are less able to access and enforce their rights, than their male counterparts.²⁶

While both men and women are moving to the informal economy, women and other disadvantaged workers, such as racial and ethnic minorities and the disabled, usually predominate in that sector.²⁷ In 2003, about two-thirds of the female work force participating in the developing world (outside of agriculture) was through the informal economy.²⁸ Many women engaged in this sector work in home-based work, street vending, and in the worst cases are trafficked as sex workers across national borders.

The predominance of women in the informal economy reflects the disadvantages women face in the labour market and the economic restructuring of the new economy. Non-standard work is becoming the new standard model of production. With the increasing shift to performance-based pay, "home-based" work, export processing zones and use of migrant workers, there is an increasing specific demand for cheap female labour.²⁹ This type of employment is generally not unionized and operates without the protections offered by the ILO core labour standards.³⁰ Contractualization or flexibilization of labour means that many regular jobs are being replaced by "temporary" workers with no benefits, many of whom are women.³¹ In India, home-based bidi making is the largest non-agricultural occupation for women and home-based work is the lowest paying work sector for women. With trade liberalization, many women have lost their livelihoods in the agricultural sector

²⁴ Cornish, *ibid* at 3-4.

²⁵ "Global Employment Trends for Women", *supra* note 5 at 3-4 and 10-12. See International Labour Conference, *Women and Men in the Informal Economy: A Statistical Picture*, (Geneva: ILO, 2002) at 26 [hereinafter, "Informal Economy"].

²⁶ See *Working out of poverty: Report of the ILO Director General*, UN ILOOR, 2003, 92-2-112870-9 at 26-29. [hereinafter "Poverty"] See also Cornish, *supra* note 1 at 3-5.

²⁷ Cornish, *ibid* at 3-5.

²⁸ See "Poverty", *supra* note 26 at 26.

²⁹ K. Rittich, "Feminization and Contingency: Regulating the Stakes of Work for Women in Labour Law in an Era of Globalization, Transformative Practices and Possibilities" in J. Conaghan, R.I Fischl and K. Klare, eds. (Oxford: Oxford University Press, 2002) at 117-118.

³⁰ S. Russell-Brown, "Labor Rights as Human Rights: The Situation of Women Workers in Jamaica's Export Free Zones" (2003) 1 Berkeley Journal of Employment and Labour Law at 179-180.

³¹ Centre for Women's Resources, *The Life and Struggle of Women Workers under Contractualization*, (2003), Asia Pacific Research Network online <<http://www.aprnet.org>>

and face discrimination as producers in gaining access to the new economy activities.³²

The global push to force large numbers of female labourers, migrants and other minority work groups outside of the formal labour market is not a discrete phenomenon of the developing world. In more industrialized countries, the informal and non-standard sector is also expanding to include new workers into the labour force and to absorb workers from the formal sphere who have been rendered redundant by economic crisis, downsizing or structural adjustment.³³ In the United States and Japan, for example, women's share of part-time employment has risen throughout the 1990's to just under 70%.³⁴

Globalization has undoubtedly opened some opportunities for women in more industrialized and developing countries to improve their position and enter "new economy" sectors of the global labour force. Yet, even women who are able to obtain "standard" employment face discrimination in terms of the type of standard employment they have access to and the terms and conditions of that employment. At the same time, the gaps in terms of wages and the treatment of those women who do make it into better paying administrative or managerial positions and the balance of female earners, who remain in more marginal, underpaid and "feminized" sectors of the global economy continues to widen.³⁵

Women also continue to be disproportionately affected by the lack of employment in the private sector and reduction of jobs in the public sector which drive them into the informal and non-standard work and perpetuate cycles of "permanent temporary employment or no employment at all".³⁶ At the same time, public sector funding crises, privatization and social sector restructuring have reduced women's access to day care, basic education and retraining, and other employment-enhancing strategies.³⁷

It is clear then that the number of women internationally who are engaged in "decent work" – measured by the ILO as available, freely chosen, productive, sustainable, equitable, secure and dignified – still lags far behind that of the world's men.³⁸ Globally, women continue to work in environments characterized by unfair labour practices and work conditions: they face discrimination, unequal and low-wages, and few opportunities for

³² Ruwanpura, *supra* note 14 at 9 and 25 and Fair Globalization, *supra*, note 3 at 47-48.

³³ "Gender Paradoxes", *supra* note 21 at 197-199.

³⁴ See International Labour Conference, *Decent Work and the Informal Sector*, UN ILOOR, 2002, Agenda Item Six, 92-2-112429-0, at 36-37. See also "Informal Economy", *supra* note 25 at 28.

³⁵ For example, although women made substantial advances in securing administrative and managerial positions through the mid-80's to mid-90's, their share of such these types of jobs ultimately remained below 30% in 43 of the 5 countries surveyed in UNIFEM'S biennial report. "Progress of Women 2000", *supra* note 10 at 91-95. Wage differentials are significant in those developing countries engaged in export-led industrialization or those that have export processing zones. "Time for Equality", *supra* note 5 at 45 and 52.

³⁶ See generally Cornish, *supra* note 1 at 4.

³⁷ See M. Comish, "Employment and Pay Equity in Canada - Success Brings Both Attacks and New Initiatives" (1996) 22 *Canada-United States L.J.*; see also Cornish, *supra* note 1 at 3-5.

³⁸ See: Anker R. et al., *Measuring decent work with statistical indicators*, Working Paper No. 2 (Geneva : ILO Policy Integration Department, 2002) on the concept of decent work indicators. See also "Progress of Women 2002", *supra* note 2 at 30-37 regarding inequalities between working men and women

participation in decision making, career advancement and long-term employment stability.³⁹ At the same time that women continue to experience such widespread and continued exploitation and the need for increased labour market equality protections, globalization forces have moved to limit such regulatory protections. While even the regulation of “standard” work has suffered in this context, as women are pushed further outside of the formal networks and deeper into the informal non-standard sphere, their quest for labour market justice becomes even more remote.

The next section reviews the formal international and regional labour law mechanisms which are currently in place to protect the rights of women workers to equality in employment.

Part 2: International Labour Law Gender Equality System

The international labour law system is made up of many intersecting and overlapping instruments including treaties, conventions, declarations, resolutions, decisions and recommendations. Together these instruments form the world’s legal framework within which women’s specific rights can be strengthened, states’ positive obligations can be clarified, and effective mechanisms can be established and improved to monitor compliance with international obligations. Since the adoption of the ILO’s *Equal Remuneration Convention* in 1951, and continuing to the present with the UN Commission on Human Rights’ 2003 adoption of the *Resolution Integrating the Human Rights of Women throughout the United Nations System*, world governments have highlighted the importance of establishing global rules to recognize women’s rights as human rights and to redress all forms of gender discrimination. As this review discloses, there has been an increasing recognition of the systemic and multi-layered nature of women’s labour market discrimination.

Treaties and Conventions

Treaties and Conventions are the most important mechanisms within the labour law system because once they are negotiated, signed and ratified, they become legally binding and enforceable against the laws and actions of each signatory state. This section focuses specifically on those Treaties and Conventions which set out the international principles, norms, and standards that are critical to the realization of women’s labour market equality.

Key ILO Instruments and Mechanisms

The ILO’s first major gender equality instrument was the 1951, *Convention Concerning Equal Remuneration for Men and Women for Work of Equal Value*.⁴⁰ This Convention signaled the ILO’s commitment to equality of economic rights and was the first instrument

³⁹ Rittck, *supra* note 29 at 122-125; and Ruwanpura, *supra* note 14 at 6-12.

⁴⁰ *Convention Concerning Equal Remuneration for Men and Women for Work of Equal Value*, (ILO Convention No. 100), 29 June 1951, 165 U.N.T.S. 303 (entered into force 23 May 1953) [hereinafter, “Convention 100”].

to address the differences between formal equality (“equal pay for equal work”) and a more substantive and systemic notion of equality (“equal pay for work of equal value”). The new standard recognized the systemic differences between men’s and women’s work and required national governments and workplace parties to carry out an objective appraisal and evaluation of this work, and implement comparable pay schemes for different work of comparable value. The Convention departed from earlier commitments to gender equality by obliging member states to take positive “action” to achieve pay equity and by following up on the effectiveness of these actions through reporting mechanisms, a complaints procedure and external monitoring.⁴¹

In 1958, the ILO took another step towards labour market gender equality by adopting the *Convention Concerning Discrimination In Respect of Employment and Occupation*.⁴² This Convention defined the parameters of discrimination in employment broadly as encompassing any distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. It requires that signatory states declare and pursue a national policy aimed at eliminating all discrimination including sex-based discrimination.⁴³

Since the early 1980's, recognizing the multiple layers of women’s disadvantage, the ILO has built on these core conventions to address women’s specialized needs as workers by adopting the *Maternity Protection Convention*⁴⁴ which protects women from termination in relation to pregnancy/maternity, guarantees women the right to return to the same or equivalent position at the same pay rate following maternity leave, and requires member states to take appropriate measures to ensure that maternity does not constitute a source of discrimination.⁴⁵ The *Workers with Family Responsibilities Convention*,⁴⁶ further requires signatory states to implement national policies which enable persons with family responsibilities to engage in employment without discrimination.

The *Termination of Employment Convention*,⁴⁷ provides that sex does not constitute a valid ground for termination. The *Part-time Work Convention*⁴⁸ – particularly significant for the predominate number of women who split their days between family care and part-time work

⁴¹ See M. Cornish, E. Shilton & F. Faraday, “Canada’s International and Domestic Human Rights Obligations to Ensure Pay Equity: Obligations to Design an Effective Enforceable and Proactive Pay Equity Law”, (Ottawa: Department of Justice / Pay Equity Task Force, 2003) at part I, [hereinafter, “Cornish, Shilton, Faraday”].

⁴² *Convention Concerning Discrimination In Respect of Employment and Occupation*, (ILO Convention No. 111) 25 June 1958, 362 U.N.T.S. 31 (entered into force 15 June 1960) [hereinafter, “Convention 111”].

⁴³ *Ibid.* at Article 1(b) and Article 2.

⁴⁴ *Maternity Protection Convention, (Revised)* (ILO Convention No. 183), International Labour Conference. Provisional Record, 88th Sess. Geneva, 15 June 2000, (entered into force 07 July 2002) [hereinafter “Maternity Protection Convention”].

⁴⁵ *Ibid.* at art. 6, art. 8, art. 9, art. 10.

⁴⁶ *Convention on Workers with Family Responsibilities*, (ILO Convention No.156), International Labour Conference, 67th Sess. Geneva, 23 June 1981 (entered into force 11 August 1983).

⁴⁷ *Termination of Employment Convention*, (ILO Convention No. 158) International Labour Conference, 67th Sess. Geneva, 22 June 1982 (entered into force 23 Nov 1985).

⁴⁸ *Part Time Work Convention*, (ILO Convention No. 175) International Labour Conference, 81st Sess. Geneva, 24 June 1994. (entered into force 28 February 1998)

– aims to ensure equality in protection between part-time workers and full-time workers, particularly with respect to the right to bargain collectively; access to occupational health and safety; and the right to work free from discrimination. The *Home Work Convention*⁴⁹ requires signatory states to adopt and regularly review a national policy on home work aimed at promoting equality with other wage earners.

Supporting these specialized conventions,⁵⁰ are those ILO Conventions protecting the principles of the right to equal treatment, full participation and non-discrimination in the work place which were elevated in status in the 1998 *Declaration of Fundamental Principles and Rights at Work and its Follow Up*.⁵¹ Of the eight conventions encompassed by the Declaration, the following are most relevant to securing women’s economic rights: *Convention No.87 on Freedom of Association and Protection of the Right to Organize Convention, 1948*; *Convention No.98 on the Right to Organize and Collective Bargaining Convention, 1949*; *Convention No. 100 on Equal Remuneration for Men and Women for work of Equal Value, 1951*; and *Convention No. 111 on Discrimination in Respect of Employment and Occupation, 1958*. The 1998 *Declaration* requires compliance with the eight “fundamental conventions” whether or not a member state has ratified them because these principles are fundamental to ILO membership. The ILO requires member states to submit annual reports on implementation and compliance with the *Declaration*.⁵²

Key UN instruments and Mechanisms

Other UN bodies are increasingly taking an important role in enforcing gender labour market equality.⁵³ Numerous UN instruments complement the ILO Conventions set out above, and more importantly demonstrate the fundamental intersection between promoting labour market gender equality and promoting basic human rights.

Women’s rights are protected in the *International Bill of Human Rights* which consists of three cornerstone documents – the *Universal Declaration of Human Rights* (“UNDHR”)⁵⁴,

⁴⁹ *Home Work Convention*, (ILO Convention No. 177) International Labour Conference, 83rd Sess. Geneva, 20 June 1996 (entered into force 22 April 2000)

⁵⁰ For other ILO Conventions which can be used to protect the rights of women workers, see generally: *ILO Underground Work (Women) Convention, 1935 (No.45)*; *ILO Protection of Wages Convention, 1949 (No.95)*; *ILO Social Policy (Basic Aims and Standards) Convention, 1963 (No.117)*; *ILO Employment Policy Convention, 1964 (No.122)*; *ILO Maximum Weight Convention, 1967 (No.127)*; *ILO Minimum Wage Fixing Convention, 1970 (No.131)*; *ILO Paid Educational Leave Convention, 1974 (No.140)*; *ILO Rural Workers’ Organizations Convention, 1975 (No.141)*; *ILO Human Resources Development Convention, 1975 (142)*; *ILO Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)*; *ILO Night Work Convention, 1990 (No.171)*.

⁵¹ *Declaration on Fundamental Principles and Rights at Work*, Geneva Conference, International Labour Conference, 86th Sess., Geneva, June 1998 [hereinafter, “ILO 1998 Declaration”].

⁵² Cornish, Shilton, Faraday, *supra* note 41.

⁵³ In addition to the instruments and enforcement mechanisms set out below, there are also UN Representatives and Working Groups that are critical in promoting and enforcing women’s economic rights. Some of these include the UN Commission on the Status of Women, UN Special Rapporteurs, the Commission and Sub-Commission on Human Rights.

⁵⁴ *Universal Declaration of Human Rights*, G.A. Res. 217 (III), UN GAIE, 3d Sess., Supp. No. 13, UN Doc. A/810 at 71 (1948)[hereinafter, *UNDHR*]

the *International Covenant on Civil and Political Rights* (“ICCPR”)⁵⁵ and the *International Covenant on Economic Social and Cultural Rights* (“ICESCR”)⁵⁶.

The *UNDHR* affirms women’s right to: equal pay without discrimination; a standard of living adequate for the health and well-being of the individual and her family; and the right of all mothers and children to receive special care and assistance and the same social protection as all other individuals.⁵⁷ The *ICCPR* ensures that men and women have the ability to fully enjoy their civil and political rights and that all persons are equal before the law and entitled to equal protection under the law, free from discrimination.⁵⁸ The *ICESCR* enhances the protection of women’s economic rights by giving more definition to work rights and requiring that member states create just and favorable working conditions including fair wages and equal remuneration without distinction based on gender.⁵⁹

The 1981 *Convention on all Forms of Discrimination Against Women*, (“CEDAW”)⁶⁰ is the most comprehensive UN Convention dealing with gender equality. It addresses the multi-faceted nature of women’s discrimination and the need for comprehensive social, political and economic remedies, sets up an agenda for national action towards the complete legal protection of women’s rights⁶¹ and monitors enforcement by requiring member states to report every four years on compliance.⁶² *CEDAW* also sets out a number of specific and important employment protections such as women’s right to: the same employment opportunities as men; application of the same criteria for selection in matters of employment; free choice of profession and employment; promotion, job security and all benefits and conditions of service that are granted to men; vocational training and retraining; equal remuneration, benefits, and equal treatment in respect of work of equal value; equality of treatment in evaluation of the quality of work; protection of health and safety in working conditions; and the right not to be discriminated against due to pregnancy or family responsibilities.⁶³

Following *CEDAW*, a number of UN Declarations were issued to strengthen gender equality internationally and to mobilize member states into taking concrete action to realize

⁵⁵ *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171 [hereinafter, *ICCPR*].

⁵⁶ *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 [hereinafter, *ICESCR*].

⁵⁷ *UNDHR*, *supra* note 54 at art. 16, art. 23, art. 25.

⁵⁸ *ICCPR*, *supra* note 55 at art. 7, art. 22, art. 23

⁵⁹ *ICESCR*, *supra* note 56 at art. 6, art. 7, art. 8, art. 10

⁶⁰ *Convention on the Elimination of All Forms of Discrimination Against Women*, G.A. Res. 34/180, GAOR, 34th Sess., Supp. No.46 at 193 (1979) [hereinafter, “*CEDAW*”].

⁶¹ By ratifying the Convention, States are committed to: incorporating the principle of equality of men and women in their legal system; abolishing all discriminatory laws and adopting appropriate ones prohibiting discrimination against women; establishing tribunals and other public institutions to ensure the effective protection of women against discrimination; and ensuring elimination of all acts of discrimination of women by persons, organizations or enterprises.

⁶² See *CEDAW*, *supra* note 60 at Part V; See also: *Cornish, Shilton, Faraday*, *supra* note 41. See generally UN “Division for the Advancement of Women” online: UN Website <<http://www.un.org/womenwatch/daw/cedaw>>

⁶³ *CEDAW*, *supra* note 60 at art.11.

this objective. In 1986, the *UN Declaration on the Right to Development*⁶⁴ emphasized non-discrimination, security, empowerment, and development rights as human rights. The *Vienna Declaration and Programme of Action*,⁶⁵ adopted following the 1993 World Conference on Human Rights, affirmed the human rights of women as an inalienable, integral and indivisible part of human rights and demanded gender mainstreaming across all UN institutions and activities. The 1995 *UN Copenhagen Declaration on Social Development*⁶⁶ reinforced these principles by calling for greater transparency and equality in governance and administration institutions in order to create sustainable foundations for social and economic development.

In that same year, following the UN Fourth World Conference on Women, member states adopted the *Beijing Declaration and Platform for Action*.⁶⁷ The *Beijing Declaration* renewed the world's commitments to eliminating all forms of discrimination against women and girl children, and the *Platform for Action* committed signatories for the first time to a detailed agenda for achieving this objective over a five year period.⁶⁸ The strategic objectives set out in the *Platform for Action*, call on member states, employers, employees, trade unions and women's organizations to promote women's economic rights and independence in order to: secure access to employment, appropriate working conditions and control over economic resources; facilitate women's access to resources employment, markets and trade; strengthen women's economic capacity and commercial networks; and eliminate occupational segregation and all forms of employment discrimination.⁶⁹

As a follow up in June 2000, the UN General Assembly after reviewing Country status reports, issued a Resolution on *Further Actions and Initiatives to Implementing the Beijing Declarations and Platform for Action* which signaled the need to accelerate implementation of the *Platform for Action* and need for more sustainable signs of an increase in women's equality internationally.⁷⁰

Regional Mechanisms

With the world divided into many economic regions, regional mechanisms are increasingly an important means for addressing women's labour market equality. This section provides a brief snapshot of some of the more prominent regional instruments that have been developed.

⁶⁴ *Declaration on the Right to Development*, G.A. Res. 128, annex, U.N. GAOR, 41st Sess., 97th plen. mtg., Supp. No. 53, at 186, U.N. Doc.A/41/53 (1986). [hereinafter, "Right to Development"].

⁶⁵ *Vienna Declaration and Programme of Action* (12 July 1993) U.N. Doc A/CONF 157/23.

⁶⁶ *Report of the World Summit on Social Development* (Copenhagen, 6-12 March 1995), UN Doc. A/CONF/166/9 (19 April 1995), Chap1. Annex 1 [hereinafter, "Copenhagen Declaration on Social Development"]

⁶⁷ United Nations, *Report of the Fourth World Conference on Women*, Beijing, China 4-15 September 1995, A/CONF.177/20, 17 October 1995 Beijing, chap1. Resolution 1, annex 1 [hereinafter "Beijing Declaration"] and annex II [hereinafter "Beijing Platform for Action"].

⁶⁸ See *Cornish, Shilton, Faraday*, *supra* note 41.

⁶⁹ *Beijing Platform for Action*, *supra* note 67 at Strategic Objectives F.1, F.2, F.5.

⁷⁰ *Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action*, GA Res. S-23/3, UN GAOR, 23rd Spec. Sess., UN Doc. A/RES/S-23/3 (2000) [hereinafter, "Beijing + 5 Resolution"].

The European Economic Community recognizes equality between men and women as a fundamental principle and gender mainstreaming as a priority objective in all of its activities. This is reinforced in the *Treaty of Amsterdam*, the *Charter of Fundamental Rights of the European Union*, and by numerous binding EC Regulations, and Directives.⁷¹ The many Directives adopted by member states to harmonize standards across borders focus on the following areas to promote equality between women and men: establishing a general framework for equal treatment in employment and occupation⁷²; equal pay for work of equal value⁷³; equal treatment in access to employment, vocational training, promotion, and working conditions;⁷⁴ the burden of proof in cases of discrimination based on sex;⁷⁵ equal treatment in social security⁷⁶ and occupational security schemes⁷⁷; equal treatment for those engaged in self-employment and protection for self-employed women during pregnancy and motherhood;⁷⁸ measures to improve safety and health of pregnant workers, and workers who have recently given birth and who are breast-feeding;⁷⁹ and parental leave⁸⁰.

Within the Inter-American human rights system, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the Inter-American Commission on Women, and Special Rapporteurship on the Rights of Women collectively work to enforce equality and non-discrimination. The *American Declaration on the Rights and Duties of Man* recognizes the right to equality before the law; the right to protection for mothers and children; the right to work and fair remuneration; and the right to social security. The 1969

⁷¹ EU Citizens can use the *Charter of Fundamental Rights of the European Union* to contest any decision which has been taken by any Community Institution or Member State who is implementing EU law, where a particular decision discriminates on the basis of sex. In addition, the *European Social Charter* requires member states to report to a Committee of Experts every two years on the implementation of social rights related to work conditions; the right to protection of health and social security; and the rights of employed women. For more on this subject see: Employment and Social Affairs “Simplification and improvement of legislation in the area of equal treatment of men and women” online: EUROPA website <http://europa.eu.int/comm/employment_social/news/2003/jul/consultation_en.html>; and ILO “Equal Opportunities in the European Union” online: ILO website: <http://www.ilo.org/public/english/employment/gems/eeo/eu/eu_main.htm>

⁷² EC, Council Directive 2000/78 of 27 November 2000 on establishing a general framework for equal treatment in employment and occupation [2000] O.J. L. 303/16.

⁷³ EC, Council Directive 75/117 of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] O.J. L 045/ 19.

⁷⁴ EC Council Directive 2002/73 of 05 October 2002 on the implementation of the principle of equal treatment for men and women as regards to access to employment, vocational training and promotion, and working conditions [2002] O.J. L 269/15.

⁷⁵ EC Council Directive 97/80 of 15 December 1997 on the burden of proof in cases of discrimination based on sex [1998] O.J.L. 014/6.

⁷⁶ EC Council Directive 79/7 of 19 December 1978 on the implementation of the principle of equal treatment for men and women in occupational social security schemes [1979] O.J.L. 006/24.

⁷⁷ EC Council Directive 96/97 of 20 December 1996 on the implementation of the principle of equal treatment for men and women in occupational social security schemes [1997] O.J.L. 046/11

⁷⁸ EC Council Directive 86/613 of 11 December 1986 on the application of the Principle of Equal Treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood [1986] O.J.L. 359/56

⁷⁹ EC Council Directive 92/85 of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers who have recently given birth and are breast-feeding [1992] O.J.L. 348/1.

⁸⁰ EC Council Directive 96/34 3 June 1996 on the Framework agreement on parental leave [1996] O.J.L. 145/4.

American Convention on Human Rights confirms that all individuals have a right to equal protection before and under the law, and the right to progressive development. Further conventions to protect civil, political and economic, social and cultural rights have expanded on these equality rights for women.⁸¹

Further regional mechanisms in North America⁸² and in the Caribbean Community⁸³ (CARICOM) provide additional means for addressing women's equality in the labour market. In the *North American Agreement on Labour Cooperation*, a side agreement to the North American Free Trade Agreement, the United States, Mexico and Canada have committed themselves to promoting 11 specific Labour Principles which are annexed to the Agreement. Of particular relevance to the economic rights of women are the principles of: prohibition on forced labour; minimum employment standards; elimination of employment discrimination; equal pay for women and men; and protection of migrant workers.

In the Asia Pacific Region, the Association of Southeast Asian Nations adopted the *Declaration of the Advancement of Women in the A.S.E.A.N. Region* in 1988 to reinforce the *Bangkok Declaration of 1967*, the *Declaration of ASEAN Concord of 1976*, and the *Manila Declaration of 1987* and to strengthen regional cooperation, collaboration and coordination for the purpose of advancing the role and contribution of women in the region's progress. In 1998 the APEC Ministerial Meeting on Women recommended developing a Framework for the Integration of Women in APEC. The ASEAN Sub-Committee on Women (ASW) Committee of Women is also working towards implementing a Plan of Action to address regional priorities of: trafficking and violence against women; implementation of CEDAW and other international instruments related to women; intensifying the efforts of the ASEAN Network for Women in Skills Training; and gender mainstreaming in the development programmes of ASEAN Member Countries.⁸⁴

⁸¹ See, Inter-American Convention on the Granting of Civil Rights to Women; the Inter-American Convention on the Granting of Political Rights to Women American Convention on Human Rights; and the American Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. For a more complete listing of resolutions in this area see online: Inter-American Commission on Human Rights <<http://www.cidh.oas.org/basic.eng.htm>>; See also "Regional Mechanisms" online: ILO website <http://www.ilo.org/http://www.ilo.org/public/english/employment/gems/eoo/inter/toc_main.htmpublic/english/employment/gems/eoo>

⁸² See M. Comish & V. Verma, *Enforcing International Standards in the Americas in an Era of Free Trade*, (Canadian Bar Association, Ottawa, 30-31 May 2002). See generally online: North American Agreement on Labour Cooperation <<http://www.naalc.org/english/infocentre/whatisclc.htm>>.

⁸³ The Caribbean Community (CARICOM) mechanisms which address equal employment opportunities of women are: the *Charter of Civil Society for the Caribbean Community*; the *Model Harmonisation Act Regarding Equality of Opportunity and Treatment in Employment and Occupation*; the *Employment (Equal Opportunity and Treatment) Act*, the *Model legislation on Equal Pay*; and the *Model legislation on Sexual Harassment*. For more on this issue see: "CARICOM" online: ILO website <http://www.ilo.org/public/english/employment/gems/eoo/cover/caricom_main.htm>

⁸⁴ The Asia Pacific Gender Equality Network, supports these mechanisms by addressing regional issues of feminization of poverty and gender inequality in decision-making. For more on this issue see "Asia Pacific Economic Cooperation" online: ILO website <<http://www.ilo.org/public/english/employment/gems/eoo/inter/apec.htm>>. See also "Asia Pacific Gender Network" online: UNDP website: <<http://www.undp.org.ph/apgen/home1.htm>>; and "Association of Southeast Asian Nations" online: ASEAN website: <<http://www.aseansec.org/8685.htm>>

In June 2002, the New Economic Partnership for African Development in Durban (NEPAD) enacted resolutions that affirm a commitment to gender equality in the labour market. For example, the *Durban Declaration on Mainstreaming Gender and Women's Effective Participation in the African Union* confirms member states' commitments to women's empowerment as enshrined in the *Constitutive Act of the African Union*.⁸⁵ The *Protocol on the African Charter on Human and Peoples' Rights on The Rights of women in Africa*, adopted in July 2003, affirms the principles of non-discrimination under the *African Charter on the Human Rights and People's Rights*. It also reinforces the *African Platform for Action* and the *Dakar Declaration of 1974*, and gives the African Commission on Human and People's Rights increased jurisdiction to deal with issues of gender inequality.⁸⁶

Part 3 International Gender Equality Principles and Standards

As Part II demonstrates, international labour law has begun the process of transforming itself from its traditional focus on the regulation of male-dominated "standard" workplaces, to taking a more systemic, inter-disciplinary and inter-institutional approach. This approach recognizes that securing gender justice for women in labour markets requires much more than enacting new labour laws. Equality measures must be taken to address the social, political and economic factors at the root of women's labour market discrimination as identified in Part I of this paper: women's increasing labour force participation; persistent income discrimination; the continuing ghettoization of women's work particularly in the increasing informal economy and the many burdens of reconciling of work and family life.⁸⁷

The international gender equality mechanisms reviewed in Part II have established a new set of universal gender equality standards to govern the actions of signatory state actors and where appropriate other social partners. The following standards, distilled from the Part II mechanisms, while far from being implemented now reflect a world-wide consensus on the nature of labour market inequalities facing women and the steps which need to be implemented to redress those inequalities

1. Labour market equality for women and securing economic rights are priorities which warrant immediate attention and demand concerted action from all governments. Every available measure must be explored and the maximum available resources must be allocated towards securing these objectives. The achievement of equality

⁸⁵ In this Declaration, member states called for: the appointment of a Commissioner with an exclusive mandate on gender issues; the establishment of a specialized Technical Committee on Gender; Operationalisation of the African Women's Committee on Peace and Development (AWCPD), and the African women's network in the Working Group for the elaboration of the ECOSOCC Protocol; and guarantees of gender balance in all the organs of the African Union within a reasonable timeframe.

⁸⁶ For more on this issue see: "African Decade of Education" online: African Union website <<http://www.africaneducationdecade.org/pages/Durban%20Declaration%20.htm>>; and "Basic Documents" online: African Commission on Human and People's Rights website <<http://www.achpr.org/html/basicinstruments.html>>

⁸⁷ Cornish, *supra* note 1 at 7-16; and C. Chinkin, *supra* note 3.

for women in all aspects of life is a fundamental precondition for achieving a sustainable, just and developed society.⁸⁸

2. Gender-based employment discrimination is systemic in nature. Traditional patterns of conduct and conceptions of what constitutes “valuable work” must be transformed in order to achieve greater workplace equality, including equal access to all benefits enjoyed by workers in the formal sector, and recognizing that women’s full participation in all aspects of the labour market is imperative.⁸⁹
3. Securing gender justices requires a multi-faceted approach with measures requiring governments and now civil society including employers and trade unions to take proactive steps coordinated through national action plans to address gender equality on a systematic basis.⁹⁰ A comprehensive national strategy must be developed which recognizes and addresses the specific features of inequality which are facing women in the many different communities within a country;
4. Women’s right to equal pay for work of equal value is a fundamental labour standard and human right of the highest priority.⁹¹ Government has a pressing legal obligation to take positive steps to eradicate gender-based wage discrimination and to enact, modify and strengthen legislation in order to prevent all discrimination in employment practices including discrimination based on family status, non-standard work, and during periods of pregnancy or parental leave.⁹²
5. Governments have an obligation to recognize the precarious position of female migrant workers and must implement measures to protect this group against involuntary confinement, forced labour, trafficking, and all other forms of labour and human rights abuse.⁹³

⁸⁸ *Beijing Declaration*, supra note 67 at para. 7; *Beijing Platform for Action*, supra note 67 para. 4-5; *CEDAW*, supra note 60 at art. 2, art. 24; *ICESCR*, supra note 56 at art. 2, art.1; *Right to Development*, supra note 64 at art.6; *ILO 1998 Declaration*, supra note 51 at Preamble, art.2(d).

⁸⁹ *CEDAW*, supra note 60 at Preamble, art.11(1); *ICESCR*, supra note 56 at art 7(a), 11.1; *Convention 111*, supra note 42 at art.2(b)(vi).

⁹⁰ *CEDAW*, *ibid.*; the *Beijing Declaration and Platform for Action*, supra note 67; and the *Resolution Integrating the Human Rights of Women throughout the United Nations System*.

⁹¹ *Convention 100*, supra note 40 at art. 2.1, art. 3.3 ; *ILO Constitution*, at preamble; *ILO 1988 Declaration* supra note 51; *Convention 111*, supra note 42 at art.2(b)(v); *UNDHR*, supra note 54 at art 23.2; *ICESCR*, supra note 56 at art. 7(a)(i); *CEDAW*, supra note 60 at art 11.1, art.12;

⁹² *Convention 100*, supra note 40 at art. 2; *ILO Part-time Work Convention*, supra note 48 at art.4-7; *ILO Maternity Protection Convention 183*, supra note 44 at art.8, art.9; *Convention 111*, supra note 42 at art. 1(1); art. 2(a)(b); art. 6; *ILO Termination of Employment Convention*, supra note 47 at art. 5(d); *CEDAW*, supra note 60 at art. 2(f), art.4, art.11.2, art.12.2; *Beijing Platform for Action*, supra note 67 at para. 165 and 178(a)(f)(d), 179(c); *ICCPR*, supra note 55 at art 10(2).

⁹³ See *UN International Convention on the Protection of the Rights of Migrant Workers and Their Families*, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), (entered into force 1 July 2003); *UN Convention on the Suppression of Traffic in Persons and of the Exploitation and Prostitution of Others*, 96 U.N.T.S. 271, entered into force July 25, 1951; *UN Declaration of Elimination of Violence Against Women*, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993) [hereinafter “DEVAW”].

6. Governments have a legal obligation to apply a gender perspective in the creation and implementation of the labour laws ensuring that women play an active role in this process, recognizing that the right to work and define work conditions is fundamental to the right to development; recognizing that women experience work differently than men and their rights to development may be obstructed by unequal access to education, time poverty, and violence; and recognizing that the empowerment of women and full participation on the basis of equality are pressing international objectives.⁹⁴
7. Governments have a legal obligation to ensure and guarantee equality outcomes.⁹⁵ Government must enforce adherence to workplace equality laws by public authorities and institutions.⁹⁶ It has an added obligation to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise and must ensure that labour equality standards are achieved in both the public and private sector.⁹⁷
8. As a follow up to the Beijing *Platform for Action* and *Beijing+5*, employers (including private sector employers) have an obligation to take proactive steps to implement equal pay for work of equal value, to eliminate gender segregation in the labour force, and to review, analyse and reformulate wage structures for female-dominated jobs with a view to raising their status and earnings.⁹⁸
9. The achievement of equality is interconnected with the achievement and operation of other fundamental labour rights, including freedom of association and the right to collective bargaining. The methods devised to achieve labour market gender equality must recognize that collective bargaining is an important mechanism for eliminating wage discrimination and for securing adequate work conditions.⁹⁹ In the process of formulating legislation and taking steps to eradicate discrimination, and protect fundamental human rights, Governments have a legal obligation to consult employers, trade unions, and civil society.¹⁰⁰
10. Government have a legal obligation to create effective enforcement mechanisms for ensuring compliance with International and national labour law standards. All labour complainants must have direct access to a competent tribunal that can:

⁹⁴ *ILO Workers With Family Responsibilities Convention*, *supra* note 46 at art. 7; *Convention 111*, *supra* note 42 at art. 2(b)(iii); *Right to Development*, *supra* note 64 at art.8; *ICESCR*, *supra* note 56 at art. 6(10), art. 10.1; *CEDAW*, *supra* note 60 at art. 10(h), art. 11.2(c); *DEVAW*, *ibid* at art.2, art.4; *Beijing Declaration*, *supra* note 67 at para. 82, para. 179(c), para. 180 (a), para. 190.

⁹⁵ *Convention 100*, *supra* note 40 at art. 2; *ICESCR*, *supra* note 59 at art. 3, art.; *CEDAW*, *supra* note 60 at art.2, art.11, art. 24; *UNDHR*, *supra* note 54; *Platform for Action*, *supra* note 67 at para.165(a).

⁹⁶ *CEDAW*, *supra* note 60 at art. 2(d)

⁹⁷ *CEDAW*, *supra* note 60 at art. 2(e); *Convention 111*, *supra* note 42 at art.2, art.3;

⁹⁸ *Beijing Platform for Action*, *supra* note 67 at para. 178(a), (h), (l) and (o).

⁹⁹ *ILO 1998 Declaration*; *Beijing Platform for Action*, *supra* note 67 at para. 178(h); *UNDHR*, *supra* note 54 at art. 20.1, art. 23.4; *ICESCR*, *supra* note 56 at art. 8.1(a); *ICCPR*, *supra* note 55 at art.22.1.

¹⁰⁰ *Beijing Declaration*, *supra* note 67 at para. 20.

adjudicate their rights; issue and enforce an effective remedy; and impose sanctions for non-compliance. Effective enforcement also requires access to legal aid for vulnerable persons seeking to enforce their rights.¹⁰¹

11. On-going monitoring, reporting and follow up within a defined time frame are necessary in order to ensure the practical implementation and realization of gender equality and full labour participation.¹⁰²

Part 4: Some Issues to Consider, Lessons Learned and Good Practices

While establishing these international gender equality standards reflects considerable progress, efforts to secure gender justice are systematically undermined by the refusal, inability or lack of capacity of governments and institutions to implement these standards and the widespread inability of women to exercise these rights in their day to day lives. There are many diverse issues which need to be addressed by policy makers, legislators and social partners in order to implement the promise of these standards. This section addresses some of these key issues; reviews various lessons learned and identifies examples of good practices.

Structural Inequalities

The structural and persistent inequalities outlined in Part I which permeate the economic, social, and political lives of men and women constitute a powerful barrier to the implementation of these standards. Gender inequality is so entrenched in the world's labour markets that progress must be made on many fronts in order that women will be able to break out from the web of inequalities they face in education, health, violence. Engendering the labour law system requires more than just enacting better workplace labour laws and enforcement measures, although these are an essential step. For women, securing gender justice in the world's labour markets requires a combination of transformative measures which are aimed at every aspect of women's inequality. The lack of resources and capacity in many countries to undertake such systemic measures is problematic and necessitates a careful planning approach by state actors and social partners with international assistance in order to plan measures which are realistically implementable.

Understanding Gender Differences

Women's experiences at work and in society vary dramatically from men's and these differences vary by country and region and within countries. While the lack of decent work

¹⁰¹ *ICCPR*, *supra* note 55 at art. 3; *CEDAW*, *supra* 60 note at art. 2(b)(d); *Platform for Action*, *supra* note 67 at para. 178(I).

¹⁰² See regarding reporting, monitoring and follow up *Convention 100* *supra* note 40; *ICESCR* *supra* note 59; *ICCPR* *supra* note 55; *CEDAW* *supra* note 60 ; *Beijing Declaration* *supra* note 67; *Beijing Platform for Action* *supra* note 67; and *Beijing+5 Resolution*, *supra* note 70.

is a world-wide issue, the particulars of the gender discrimination is dependent on the country and on women's age, location, education level, class and ethnicity.¹⁰³ Securing gender justice requires at its most fundamental level that equality measures are based on a specific and clear understanding of the social, economic and political labour market barriers facing women in a particular country, region and local area.

While it may seem obvious that policies and laws should be based on accurate information, the international labour law system historically ignored the circumstances and needs of women's work by focussing on men's "standard" work and even for women holding "standard" work ignoring the needs of those women for protections such as pregnancy leave and equal pay. Protecting the rights of women workers in the new economy requires that the many diverse employment and unemployment circumstances facing women are addressed. As men also increasingly find themselves in this new "feminized" economy, they will also benefit from the labour law system addressing women's economic issues.¹⁰⁴

Gender Mainstreaming, Planning and Pro-Active Intervention

The above-noted collection and analysis of gender information is essential to the development of the National Plans for implementing gender equality called for by the *Beijing Platform of Action*. Engendering labour market policies and law means making visible and then addressing women's concerns, needs and aspirations. Policy and law-making must be gender aware and responsive not gender blind. This approach known as 'gender mainstreaming' is the cornerstone of the *Beijing Platform* and *CEDAW*. This requires not just making programs or policies more accessible to women but the simultaneous mobilization of legal instruments, financial resources and a country's analytical and organizational capabilities to develop balanced relationships between men and women. State actors and social partners must therefore redefine their mandates to proactively intervene and address the measures need to improve women's equality establishing goals and timetables for those measures.¹⁰⁵

A recent important initiative which draws effectively on the lessons learned from years of struggling to redress gender discrimination is the European Union's *Community Framework Strategy on Gender Equality (2001-2005)*. The *Community Framework Strategy* is comprehensive, embracing all Community policies in an effort to promote gender equality either by adjusting general policies and/or by implementing concrete actions specifically targeted in a pro-active way at a particular situation facing European women. The *Strategy* addresses five inter-related fields and then develops specific operational objectives within those areas: promoting gender equality in economic life; equal

¹⁰³ Ruwanpura, *supra* note 15 at 22.

¹⁰⁴ Cornish, *supra* note 1.

¹⁰⁵ *Ibid.*

participation and representation; equal access and full enjoyment of social rights for men and women; gender equality in civil life and change in gender roles and stereotyping.¹⁰⁶

The dual focus of the Community's strategy is a marked departure from previous Community initiatives which, despite the *CEDAW* and *Beijing* requirements had focussed on specific compartmentalized programmes. The new *Strategy* brings together under one umbrella all the different initiatives in order to facilitate clear assessment criteria, monitoring tools, setting of benchmarks, gender proofing and evaluation.¹⁰⁷ While recognizing that gender mainstreaming is necessary to include and address women's issues in general policy and legal planning, the *Strategy* also recognizes that such mainstreaming will only be effective if it is buttressed by specific initiatives which target women's unique needs.¹⁰⁸ Gender mainstreaming, without a simultaneous political and resource commitment has sometimes been used as a way of eliminating funded gender specific policies and departments. The *Community Framework Strategy* recognizes this problem by adopting a dual track strategy.

Taking on Patriarchichal Values and Constraints

A recent important ILO study, *Quality of Women's Employment: A Focus on the South*, by Kanchana N. Ruwanpura reflects on the considerations and measures which must be taken to implement labour market gender protections. This study underscores the need to specifically acknowledge and address the dynamics of the social, cultural and patriarchichal values and institutions which affect the perceptions of women and their work. Effective measures to provide more and better jobs for women requires state actors and social partners to develop mechanisms which address these social and institutional labour market constraints. Otherwise, women's attempts to secure a better position in the labour market will continue to be frustrated by social and cultural norms which label women as secondary or marginal.¹⁰⁹ Promoting equality requires promoting long-lasting changes in parental roles, family structures, institutional practices, the organization of work and time, personal development and independence and the involvement of men.

Targeting the Occupational Segregation of Women

The world-wide occupational segregation of women has become the central mechanism for perpetuating women's secondary status and the patriarchy system. Such segregation reinforces the gender division of labour, pays low wages, and maintains women's economic dependence and weakened power in the labour market.¹¹⁰ The use of cheap female labour by capital in the new economy as highlighted in Part 2 has reinforced

¹⁰⁶ The European Commission, "Community Framework Strategy on Gender Equality (2001-2005)" at 4, online: The European Commission <http://www.europa.eu.int/comm/employment_social/equ_pp/strategy/22_en.html

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.* at 3

¹⁰⁹ Ruwanpura, *supra*, note 14 at 6.

¹¹⁰ *Ibid.*

women's employment ghettos. With the benefit of data showing the gender-based structure of labour market occupations, measures can be taken to improve the conditions of current women's employment as well as to develop measures to allow women to gain access to "male-dominated" work with social protections.¹¹¹

Affirmative action or employment equity measures and laws are necessary to attack the occupational segregation of women both horizontally and vertically.¹¹² An example of the type of specific initiatives which are required is the ILO's International Programme on More and Better Jobs for Women. This programme provides assistance to countries to meet ILO equality standards and the requirements of the *Beijing Platform for Action* and Copenhagen Declaration on Social Development.¹¹³ As many countries lack the institutional capacity to engender their labour law framework, this ILO programme steps in to provide needed support.

Pay Equity Measures

Measures to address gender-based pay inequalities require a multi-faceted approach tailored to a country's needs which can include: laws establishing minimum wages; promoting collective bargaining in the areas where women work; establishing pay equity laws to require women's jobs to be paid on a comparable basis as men's jobs and finally special measures for improving the income received by women from the informal economy including sectoral wages and other income-enhancing measures.. International human rights instruments combined with the experience implementing ILO Convention 100 leads to the following guiding principles for pay equity laws: Wage discrimination is systemic in nature. Traditional patterns of conduct must be transformed in order to achieve equality. Discrimination-free wages must be identified by reviewing, analyzing and reformulation wage structures for female-dominated jobs with a view to raising their status and earnings.

Accommodating Women's Domestic and Child Care Responsibilities

A critical feature of the disadvantage women experience in the labour market flows from their domestic and child care responsibilities which often lead to their taking low or non-paying "flexible" jobs with little or no protection. Labour market laws and policies must adapt to recognize the links between family and work, to fairly distribute the costs and responsibilities of social reproduction among women, men and society and to adopt measures which accommodate for these social reproduction responsibilities.¹¹⁴ Parental leave policies are a way to acknowledge and cross-subsidize the economic costs of parenting which have historically fallen on women's shoulders.¹¹⁵ Supportive measures

¹¹¹ Ruwanpura, *supra* note 14 at 16.

¹¹² Ruwanpura, *supra* note 14 at 11.

¹¹³ See L. Lim, "More and Better Jobs for Women: An Action Guide - An ILO Follow up to the Fourth World Conference on Women and the World Summit for Social Development" (International Labour Office, Geneva, 1996).

¹¹⁴ "Gender Paradoxes" *supra* note 21 at 202-204.

¹¹⁵ Rittich, *supra* note 29 at 132.

such as child care are needed to level the playing field for women. Otherwise, the new globalized employers looking for cheap and flexible labour will continue to take advantage of the vulnerable situation of female parents and capital will continue to exploit women by taking advantage of their need for flexible work.¹¹⁶

Addressing the Needs of Women in the Informal Economy

Given women's predominance in this sector, the first step is to use gender data to understand country and region specific information about where women are found within the informal sector. The next step is to develop labour protections which will address the needs of these particular workers. This means rethinking labour law protections to adapt to the needs of this very diverse sector. For many women in the informal economy, their status is most likely to be own account, self-employed or home-based workers. Many home-based workers who previously produced crafts are now being drawn into industrial production and experiencing further exploitation. Labour protections in this context may mean measures to provide equitable access to micro-credit, marketing information and other entrepreneurial supports. Successful strategies in this area focus on providing such workers with networking and educational opportunities which build towards self-reliance, independence and improved productivity. As example is the successful SEWA program in India which has these objectives.¹¹⁷ Other important initiatives have been taken to improve the income and conditions of street vendors, an occupation which of is one of the few readily accessible avenues of employment to women. The 1995 Bellagio International Declaration of Street Vendors, calls on governments to develop national policies to improve vendors' conditions, including improving licensing, involving vendors in urban development plans and providing access to child care.¹¹⁸ As women occupy the lowest paid, lowest skilled jobs in the informal sector, other measures include providing training for women to undertake the specialized higher status and paying "male" jobs in the informal sector which are often held by men.¹¹⁹

Organizing Women Workers and Promoting Core Labour Standards

The informalization of the economy has weakened the power of trade unions and collective voice representation. Workers are often no longer in a traditional one-site workplace which historically facilitated union organizing. Home workers and small workshops are often "invisible" and difficult to organize.¹²⁰ Where organizing has been successful, such as the unionization of certain domestic workers in Namibia, the organizing of market traders in Cote D'Ivoire and Burkina Faso, this has often been attributed to such organizing efforts being supported by ILO projects which provide the organizing women with access to funds,

¹¹⁶ Ruwanpura, *supra* note 14 at 6-8; and see A. Obando, *supra* note 18 at 1-2.

¹¹⁷ Ruwanpura, *supra* note 14 at 17; and Cornish, *supra* note 1 at 8.

¹¹⁸ M. Cohen, "Women Street Vendors: The Road to Recognition", Population Council, New York (2000) 20 SEEDS , ISSN 073-6833 at 18.

¹¹⁹ Ruwanpura, *supra* note 14 at 19.

¹²⁰ Ruwanpura, *supra* note 14 at 20-21; and Decent Work and the Informal Economy Report VI, Geneva, ILO, 2002.

marketing and training initiatives. This highlights the critical importance of institutional support and capacity building in facilitating the collective voice representation of women workers.¹²¹ It also points to the need to promote compliance with the ILO's core labour standards which include freedom of association and the right to be free from discrimination in employment.¹²²

Empowering the Voices of Women and their Representatives

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

Consumer Campaigns

An emerging new protection for women workers world-wide has been the waging of consumer campaigns to improve the conditions of workers for supply chain contractors to apparel or manufacturing companies from the developed world. Women in these transnational industries often in export processing zones often remain disproportionately vulnerable to abusive labour conditions because of their limited employment opportunities. Businesses maximize profits by establishing operations where commercial imperatives are unrestricted by effective labour legislation.¹²³

As a response to globalization's persistent erosion of world labour standards, consumer campaigns have led to auditing to establish fair workplace practices by organizations such as Verite on behalf of buyers such as the Gap, Liz Clairborne and Tommy Hilfiger.¹²⁴ While these campaigns have raised a number of issues and concerns, overall they have achieved a remarkable degree of success as a potential further source of international employment governance.¹²⁵ Campaigns by NGOs and trade unions highlight the social consequences of manufacture as commercial considerations alongside quality and price.¹²⁶ This is done through publicizing global labour abuses and then working to establish more

¹²¹ Ruwanpura, *supra* note 14 at 21.

¹²² Cornish and Verna, *supra*, note 83 and Cornish, *supra*, note 1 at 14.

¹²³ K. Elliott and R. Freeman, "White Hats or Don Quixotes? Human Rights Vigilantes in the Global Economy" (Massachusetts: National Bureau of Economic Research, Working Paper 8102, 2001) [hereinafter "White Hats"], A. Blackett, "Global Governance, Legal Pluralism and the Decentred State: A Labor Law Critique of Codes of Corporate Conduct. 2001, 8 Indiana Journal of Global Legal Studies at 401-2.

¹²⁴ Ruwanpura, *supra*, note 14 at 21

¹²⁵ Blackett, *supra*, note 123 at 401.

¹²⁶ *Ibid*, White Harts, *supra*, note 123 at 16.

socially viable options through corporate codes of conduct and auditing mechanisms.¹²⁷ While such campaigns rely on individual consumers, NGO's are ultimately critical to catalyzing and channeling consumer purchasing power's influence into concrete change.¹²⁸ Starbucks' April 2000 adoption of fair trade coffee following anti-sweatshop (AS) activist successes, for example, illustrates exactly this effect.¹²⁹

Unfortunately, the importance of image to transnationals often leaves them struggling to improve public relations instead of employment policy, with many either slipping away from inconvenient rights commitments or simply weathering the publicity storm. Effectively monitoring suppliers for labour-standard adherence is difficult and expensive for corporations¹³⁰ in an environment where shoppers react far more strongly to negative than positive human rights records.¹³¹ There is also concern that such campaigns should not take the place of governmental measures to enforce core labour standards. As well, such campaigns often undergo significant resistance to including measures facilitating union organization particularly where consumer support for union rights is weak.¹³² Yet, this often high-profile consumer advocacy did help to give more prominence to labour rights on the public agenda. Resulting attention from policy-makers had both bi- and multilateral impacts, ranging from the inclusion of incentives for industrial unionization in 1999 Cambodian-US trade negotiations to Kofi Annan's "Global Compact" appeal in the same year for transnational business to respect nine core principles, including human and labour rights.¹³³

Trade Agreements, IFIs and Transnational Corporations

National markets are significantly affected by forces and laws outside the country, including international or regional trade arrangements, the requirements of international financial institutions and transnational corporate business practices. Trade liberalization policies often tend to define social and economic regulation as "trade barriers". These forces are limiting the ability of individual states to exercise control over their labor market policies. Trade agreements negotiated at the transnational level have a profound impact on public policy making it more difficult for governments to control their labour markets. The negotiation of trade agreements have been widely criticized for the lack of substantive labor and social protections including the protection of core labour standards as well as the lack of transparency¹³⁴ Women's NGOs and unions are lobbying organizations such as the World Bank and the World Trade Organization to take steps to ensure that financing, development and trade practices promote gender equality rather than inequality. The

¹²⁷ *Ibid*, 1 and Blackett, *supra*, note 123 at 425-426.

¹²⁸ *Ibid* at 28.

¹²⁹ *Ibid* at 29.

¹³⁰ *Ibid*, 7 at 22.

¹³¹ "White Hats", *supra* note 123 at 9.

¹³² Blackett, note 123, *supra*, at 430-31, 436-440

¹³³ "White Hats", *supra* note 123 at 29-31.

¹³⁴ Cornish and Verma, *supra* note 83.

current move to include “services” in trade agreements, a sector where women are clustered will also have equality implications. The World Bank has enacted policies to integrate gender into its work and has taken significant steps but the progress is slow given the required time, resources and commitment needed from client countries.¹³⁵ Progress is even slower on the trade front.¹³⁶ There is considerable debate and research on how labour and human rights protections can be best addressed in a trade context, including whether core labour standards should be negotiated into trade agreements or left to the enforcement procedures of the ILO.¹³⁷

Part 5: Conclusion

As the Part 4 review illustrates, engendering the international labour law system is a complex multi-faceted process. Harnessing the full potential of a country to compete in a globalized world requires unleashing the full productive potential of its labour force. Nation states will not develop or prosper without ensuring the full participation of women and men in all aspects of social, political and economic life. Results-based, outcome-directed steps must be taken by international bodies, states, employers and unions to ensure that the international labour equality standards transcend to the national and local level such that gender equality becomes the reality for the world’s women in their daily lives.

As women are empowered and work with advocacy, trade union and other civil society organizations, the process of “globalization from below” works towards the recognition and enforcement of women’s employment rights. Such movements working with state and international actors and institutions seek to regulate and control the inequitable practices of the “globalization from above” forces - the movement of corporate enterprises, markets and capital.¹³⁸ An engendered international labour law system will play a key role in bringing a measure of balance and equality to this struggle.

¹³⁵ Workers in an Integrating World, 2002, World Bank, Washington, DC, Oxford University.

¹³⁶ S. Polaski, 2003, “Trade and Labour Standards: A Strategy for Developing Countries”, Washington, Trade, Equity and Development Project, Carnegie Endowment for Peace.

¹³⁷ Ibid, and Cornish and Verma, *supra*, note 83.

¹³⁸ C.Chinkin, *supra*, note 3.