

**SECURING PAY EQUITY FOR WOMEN'S WORK -
EVERYONE BENEFITS - THE INTERNATIONAL EXPERIENCE**

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INTRODUCTION AND SUMMARY¹

For women there is one constant. Regardless of the country they live in, they face widespread systemic pay discrimination across the labour market continuum - whether they work in the formal or informal economy - are employed or self-employed.² Despite rising education, women world-wide receive, on average, 78% of the pay men earn. Unlawful discrimination and prejudice which undervalues their work compared to men accounts for much of that gap.³ Equal pay for Work of Equal Value or pay equity is a fundamental human right which guarantees that women will be paid the same for work which is of comparable value to that of men. Ensuring non-discriminatory labour market outcomes is a hallmark of democratic governance and the ILO "Decent Work" standard which the world's governments are committed to provide.⁴ In a planet where a person's pay is critical to family, community and nation prosperity and survival and women two thirds of the world's poor, the gender pay gap is a crisis which must be solved.⁵

The ILO, World Bank and World Economic Forum all recognize that closing that gap is a key component of sustainable global productivity and equitable and secure development and governance.⁶ Women's paid and unpaid work is critical to the world's ability to meet the 2015 Millennium Development Goals for poverty reduction.⁷ International human rights instruments call for governments to provide the necessary legislative and policy framework to ensure compliance with international pay equity standards.⁸ ILO Convention 100 - Equal Remuneration for Work of Equal Value along with ILO Convention 111 re: Discrimination (Employment and Occupation) are amongst the most widely ratified ILO Conventions.⁹ Reflecting this consensus, many countries, often with the assistance of the ILO are looking to develop rights-based, practical and effective mechanisms to secure these rights. Yet, an ILO Study has shown that Convention 100's objectives are "largely unattained".¹⁰ As with any remedy aimed at a complex and systemic social phenomenon, implementation difficulties and resistance are fueled by power dynamics and stereotypes along with limited resources and capacity.¹¹

This outline paper, after highlighting in Part I the globalization context, explains in Part II the problem to be solved - the dynamics and impacts of gender-based pay discrimination and the diversity of women's work contexts. Part III reviews how everyone benefits with pay equity compliance. It reviews the evolution of pay equity as a fundamental human right and the international pay equity standards which the world has agreed

¹Prepared with the excellent assistance of Janet Borowy of Cavalluzzo Hayes Shilton McIntyre & Cornish..

²Cornish, Mary (2007) "Closing the Global Gender Pay Gap: Securing Justice for Women's Work" Comparative Labor Law & Policy Journal Vol 28, No 2, Winter 2007; Armstrong, Pat and Cornish, Mary, Restructuring Pay Equity for a Restructured Workforce: Canadian Perspectives, Gender, Work and Organization, Oxford, UK: Blackwells, 2003; ILO, (2003) Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work ILC 91st Session 2003; ILO, Director General, Equality at Work: Tackling the Challenges, 2007, Geneva.

³ Pay Equity Task Force. 2004. Pay Equity : A New Approach to a Fundamental Right . Pay Equity Task Force, Final Report. Ottawa: Pay Equity Task Force and Marie-Thérèse Chicha, A Comparative Analysis of Promoting Pay Equity: Models and Impacts. Work in Freedom, International Labour Organization, 2006; UNIFEM, Progress of the World's Women, 2005, Women, Work & Poverty, United Nations, 2005 and United Nations, Taking Action: Achieving Gender Equality and Empowering Women, UN Millennium Project, Task Force on Education and Gender Equality, 2005.

⁴ ILO, (2003), *supra*, note 2 and ILO, (2007), note 2.

⁵Armstrong Pat, Mary Cornish and Elizabeth Millar, Pay Equity: Complexity and Contradiction in Legal Rights and Social Processes, CHANGING CANADA: POLITICAL ECONOMY AS TRANSFORMATION. Montreal, McGill-Queen's University Press, 2003. Edited by Wallace Clement and Leah F. Vosko; ; Chicha, *supra* note 3; Jill Rubery, Damian Grimshaw and Hugo Figueiredo, How to Close the Gender Pay Gap in Europe: Towards the Gender Mainstreaming of Pay Policy. INDUSTRIAL RELATIONS JOURNAL 36:3, 2005;

⁶ Cornish, (2007), *supra*, note 2.

⁷UNIFEM, *supra*, note 3.

⁸Cornish, Mary & F. Faraday (2004) "Achieving Pay Equity for Women – Human Rights and Business Development Imperatives", www.nacew.govt.nz/publications; European Project on Equal Pay, www.equalpay.nu;

⁹ILO Convention 111 Discrimination (Employment and Occupation) ILO Convention 100 (Equal Remuneration), 1951 <http://www.ilo.org/ilolex>

¹⁰ ILO, Chicha, *supra*, note 3.

¹¹Fudge, J and McDermott, P. (eds.) Just Wages: A Feminist Assessment of Pay Equity, Toronto, University of Toronto Press, 1991; Hallock, M Pay Equity: the Promise and Practice in North America, Labour & Industry, 10.2 (Dec.1999): 53; ILO, Chicha, *supra* note 3, Cornish, (2007) *supra* note 1.

to implement. As well, it highlights the international consensus that pay equity progress will deliver enormous social, business and development benefits while inaction will lead to significant detrimental impacts. Part IV considers the global state of compliance, reviewing key pay equity governance models. Part V reflects upon the achievements and lessons from the global experience with a focus on the Canadian experience. Part VI summarizes key lessons learned, issues to consider and some good practices for achieving pay equity.

This paper makes five main points. 1) the need to mainstream pay equity awareness and compliance into labour market governance so that women's work is accurately counted and valued compared to men's work. This requires the right mix of tailored and systemic solutions based on international standards but tailored to the particular country context and the diversity of women's work. This means recognizing that the work "standard" to women includes many different types of worker and self employment relationships and therefore the equality promoting mechanisms must vary accordingly to be effective; 2) In globalized labour markets women's work continues to be precarious and the undervaluation of women's work infuses the pay women receive. 3) a human rights-based approach to rectifying pay discrimination ensures the right focus and priority for addressing the problem in order to secure the systemic benefits to the planet of gender equality and to avoid the adverse impacts of inaction; 4) studies show the most successful pay equity governance systems are those based upon a pro-active legislative compliance model requiring pay adjustments to close identified discriminatory gaps with a specialized, resourced and accessible enforcement machinery involving the participation of women or their representatives. 5) the lessons learned from the global pay equity experience indicate that a comprehensive campaign that maps, in detail, women's position in the labour market combined with the active involvement of all state, business and civil society actors provides greater valuing of women's work. All actors play a key role and must have a clear and equal voice in the development of pay equity measures. Finally and most significantly, 6) as the campaign for pay equity continues, greater attention needs to be paid to the development of new, expanded pay equity models which move beyond a focus on formal economy waged employment to women's precarious work all along the labour market continuum..

This paper seeks to contribute to the global efforts of governments, enterprises, trade unions, civil society and women's voice organizations to reduce the pay gap. The goal is to work towards a comprehensive pay equity strategy which can deliver discrimination-free pay for the diverse forms of work women do.¹² For clarity, the term "pay equity" is used through this paper to refer to the right of women to receive equal pay for work of equal value, which seeks to rectify the fact women are paid less than men for their work in job ghettos because they are women. This is distinct from the discrimination women face when they are paid less than men when doing the same job as men. This "equal pay for similar work" relates to a very small port of the gender pay gap as most women perform different work than men. Employment equity or affirmative action measures address the discriminatory barriers women face in accessing higher paid male work, eg. lack of child care support.

PART I. THE GLOBALIZED WORK CONTEXT

The global transfer of work and labour migration driven by the global information and financial economy and global supply chains has transformed labour markets. The effects are highly gendered.¹³ While women have increased opportunities for paid employment in the new global economy, their conditions of work have not commensurately improved with the level of their contributions, clustered as they are at the lowest end of the formal and informal labour market continuum.¹⁴ Attached at Annex A is a diagram reflecting this continuum of women's and men's work. Instead of work becoming better protected as the new economies grow, the global trend is to informality and precariousness, with women dominating such work. Even formal work is increasingly precarious with many enterprises having a core labour force dominated by men with women workers mostly found in the networked peripheral, temporary, contract and home-based work which supports such globalized enterprises.¹⁵ Many women have no "employer" at all as they are driven into self-employment

¹² See UNIFEM, *supra*, note 3.

¹³ H. W. Arthurs, *Labour Law Without The State* (1995) 46 U.T.L.J. 1.

¹⁴ Vosko, L (ed.) *Precarious Employment* Toronto: Mc-Gill-Queen's Press 2006.

¹⁵ Judy Fudge and Rosemary Owens, eds. *Precarious Work, Women and the New Economy: the Challenge to Legal Norms in*

or work as an own account worker.¹⁶ Even where women have gained access to formal work through new trade practices in the export processing zones, economic forces often lead state actors to agree to weaken labour laws or condone weak enforcement, denying women access to decent work.¹⁷

With “flexibilization” and decentralized production leading to the “individualization” of labour conditions, the equality role of trade unions and collective bargaining protections has also been undermined.¹⁸ Macroeconomic policies based on trade and international financial institutions’ obligations which favour deregulation and lower taxes also affect the capacity of a country to implement its human rights obligations.¹⁹ These policies also lead to governments further depending on underpaid women’s work to deliver public services and relying on women’s unpaid care and community work to replace public services which are privatized or eliminated.²⁰ Many marginalized women are excluded from the traditional pay equity remedial protections which focus on comparing male and female waged work within a formal enterprise. Labour and human rights law must now adjust to protect women’s work which is performed in many different contexts, including offices, factories, hospitals, farms, homes, and the streets.²¹

PART II. THE PROBLEM: SYSTEMIC GENDER-BASED PAY DISCRIMINATION

1. Occupational Segregation and Unequal Pay

Women’s work differs from men’s work worldwide both in terms of the types of work and the structure of employment relationships. While the pay gap differs from 10% in the Nordic countries to 50% in others, and the European average is a 15% difference, the patterns are constant and nowhere do women have comparable income.²² Regardless of where women work along the formal/informal economy continuum, their work is generally performed in segregated ghettos characterized most often by low pay. This occupational segregation perpetuates women’s secondary status relative to men and the patriarchal system. It reinforces the gendered division of work; pays low wages; creates inferior jobs; and maintains women’s economic dependence and ineffective bargaining power in the labour market.²³

Women currently are required to submit to a labour market regime which systematically undervalues and underpays their work because women do it and this undervaluation is reflected in the pay for their labour as employees and the income they receive as entrepreneurs.²⁴ Women experience systemic barriers in almost every aspect of the labour exchange - this ranges from whether they have paid work at all, the type of work they obtain or are excluded from; the availability of supports such as child care, their pay, benefits and conditions of work, their access to higher paying “male” work; the insecurity of their jobs or enterprises; their lack of any or equitable pension entitlements; and not having the time, resources or information to enforce their rights. Women who are multiply disadvantaged by factors such as race, ethnicity, indigenous or disability

Precarious Work, Women and the New Economy: The Challenge to Legal Norms, Hart Publishing, 2006.

¹⁶ Fudge and Owens, *ibid* Armstrong and Cornish, *supra* note 2.

¹⁷ Cornish et al. *supra* note 2.

¹⁸ Fudge and Owens *supra* note 15 and ILO, ORGANIZING FOR SOCIAL JUSTICE, p. 113 at <http://www.ilo.org/declaration>.

¹⁹ Cornish and Faraday (2004), *supra* note 8.

²⁰ Armstrong & Cornish, *supra* note 2.

²¹ UNIFEM, *supra* note 3

²² See for example, EU project on Equal Pay, <http://www.equalpay.nu/en>; and the European Road Map to Equality at http://ec.europa.eu/employment_social/news/2006/mar/com06092_roadmap_en.pdf.; Euroline, 2002 Earnings study at <http://www.eurofound.europa.eu/eiro/2002/01/study/tn0201101s.htm> Pat Armstrong and Hugh Armstrong, THE DOUBLE GHETTO, Toronto: McLelland & Stewart, 1984 and Lynda Ames, Fixing Women’s Wages: The Effectiveness of Comparable Worth Policies (Canada) Industrial and Labor Relations Review, 48 n.4 (July, 1995) 705-725.

²³ Armstrong and Cornish, *supra* note 2 and Cornish et al. *supra* note 5 and Fudge and Owens, *supra* note 15.

²⁴ Armstrong and Cornish, *supra* note 2. Armstrong and Armstrong *supra* note 23; Armstrong, P. Laxer, K Precarious Work, Privatization and Health care: the case of ancillary workers in Vosko, L. (Ed.) Precarious Employment (2006) *supra* note 15

status experience more acute forms of discrimination.²⁵

2. Systemic Undervaluation of Women's Work

Many of the demands, conditions and contributions of women's work are invisible and undervalued both because so many women do these jobs and because female-dominated skills, effort, responsibilities and working conditions are associated with unpaid domestic or volunteer work. Yet such skills are essential to carrying out the work and are acquired over time, through training, even though they are often undervalued relative to those of men. Moreover, many of these women's jobs are highly demanding, but in ways so long associated with women that they are thought to be part of being a women. Dr. Pat Armstrong²⁶

The systemic undervaluation of women's work, widely acknowledged in research literature and public policy, is global, systemic and deeply entrenched in economic and social structures.²⁷ While some of the gap is explained by legitimately valued differences such as experience, education or work sector, a substantial proportion arises from the failure to recognize and value the skills, effort, responsibility and working conditions of women's work because women do it.²⁸ The research of Canadian sociologist Dr. Pat Armstrong, relied on in many Canadian pay equity decisions, establishes that such discrimination arises out of three interconnected features associated with women's work: 1) Women are segregated from men into different work and often different places of work; 2) Female-domination of work and low pay are linked and the more women are concentrated in a field of work, the less it pays. Overall, labour force data consistently shows that work mainly done by women is consistently paid less than the work mainly done by men, with little regard to the value of the work to the employer or the consumer; and 3) lower pay reflects the systemic undervaluation of women's work relative to that of men's work. These defining characteristics are generally present regardless of the nature of the work, the industrial sector, women's capacities or "employer" and the presence/ absence of male comparators in their workplace.²⁹

While there are debates about how much of the pay gap can be accounted for by this discriminatory undervaluation, there is no doubt the proportion is substantial and has not been closed by market forces. As the pay discrimination women experience arises because they are associated with the work, this prejudice and undervaluation does not stop at the edge of the "employee" relationship but also infuses the work women do as entrepreneurs and own account workers.³⁰

PART III. SECURING PAY EQUITY –WHY EVERYONE BENEFITS

Pay equity is a fundamental human right and a key business, social and development imperative. As a result, everyone benefits from securing the right and everyone loses if the right is violated.

1. Pay Equity - The Human Rights Imperative and Framework

(a) The Evolution of Pay Equity Standards

International and regional instruments have imposed increasingly specific directives for action to be taken by signatory states and social partners in order to achieve equitable pay outcomes for women. Starting with the ILO's 1919 Founding Convention, the principle of equal work for equal value has been recognized. The 1952

²⁵ ILO, *supra* note 2, UNIFEM, *supra* note 3 and Armstrong and Cornish, *supra* note 2.

²⁶ Pat Armstrong, Equal Pay for Work of Equal Value. Expert report prepared for the Canadian Human Rights Commission, Ottawa, 2002 and Pat Armstrong, Affidavit in the Court case, CUPE et al v. Attorney-General (Ont.) et al. 2001, see <http://www.equalpaycoalition.org/pataffidavitapril15mcfinal.PDF>.

²⁷ D. Treimann and H. I. Hartmann, WOMEN, WORK AND WAGES: EQUAL PAY FOR WORK OF EQUAL VALUE (Washington: National Academic Press, 1981) and ILO, Chicha, *supra* note 3.

²⁸ Study estimates that 5-15% of unexplained gap is attributable to systemic undervaluation. See ILO, Chicha, note 3.

²⁹ Armstrong (2006) *supra* note 26; Armstrong, et al., *supra* note 5; ILO, *supra* note 4.

³⁰ UNIFEM, *supra* note 8 and Cornish et al. *supra* note 5, and Cornish, *supra* note 2.

Convention 100 was the first standard to take a systemic approach to a labour market problem - ie. occupational segregation. The 1958 Convention 111 went further and prohibited discrimination in all employment and occupations. With the 1966 International Covenant on Economic Cultural and Social Rights and International Covenant of Civil and Political Rights the world enshrined pay equity as interconnected to and necessary to sustain other important protected rights. The 1979 Convention on Elimination of Discrimination Against Women (CEDAW) requires proactive pay equity measures and was followed by the 1995 Beijing Platform and Declaration of Action which adopted gender mainstreaming for ensuring women's pay equity. These instruments use even stronger proactive language *requiring* government and employers to ensure equality outcomes for women in practice and mandating regular reporting to monitor compliance. This recognized that the undervaluation of women's work perpetuates women's low socio-economic status and therefore pay equity strategies are an essential way to establish the overall conditions for women's equality.³¹ With the 1996 ILO Declaration on Fundamental Principles and Rights at Work, Conventions 100 and 111 became part of the core labour standards the world agreed to protect. Finally, with the 2004 Decent Work standard now being enshrined in many world documents, securing equitable work through compliance with Conventions 100 and 111 is an essential element of Decent Work.³² Regional mechanisms also incorporate pay equity standards, including the EU, NAFTA's NAALC agreement and OAS instruments and documents.³³

(b) What do these International Standards Mean for Action?

Drawing from the above-noted instruments, the international obligations for pay equity action can be summarized as follows: 1) The right must be guaranteed, requiring equal remuneration for women's work where comparable to men's work; 2) As a fundamental labour standard necessary for building sustainable, just and developed society, it must be given the highest priority; 3) Governments should enact mechanisms covering public and private sector to ensure practical realization of the right "without delay", supported by adequate resources; 4) Enterprises have proactive obligations to achieve and maintain pay equity; 5) Pay equity mechanisms should require gender inclusive methodologies for evaluating and comparing the different work and reformulating women's pay structures; 6) women's representatives should have active role in enforcement; and 7) Pay equity must be practically enforceable by expert body with appropriate sanctions.⁴³

(c) Importance of the Human Rights-Based Approach

With "human rights" as the defining perspective, this right is not negotiable and securing the right is an essential for human dignity and respect. The manner and reasonable timing for securing the right should be the subject of social dialogue. "Pay equity" adjustments to rectify the discriminatory undervaluation of "women's work" must be treated as a "human rights remedy" and not merely a privilege or "pay increase" which can be cutback or eliminated when it suits an enterprise or government's cost-cutting agenda. The policy goal is to develop mechanisms which will start to deliver gender equitable pay all along the labour market continuum.

2. Pay Equity - the Business, Social and Development Imperative

³¹ Cornish et al,(2003) *supra* note 2; UNIFEM *supra* 7; Armstrong et al, *supra* note 5.

³²ILO, 2003, *supra*, note 2.

³³ See Dir 75/117/EEC on equal treatment between men and women on the application of the principle of equal pay and Article 141 EEC and Cornish et al., *supra* note 5.

³⁴ ILO EQUAL REMUNERATION CONVENTION (NO. 100) (ILO Convention No. 100), Articles 1, 2(2), 3, 4; ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK (ILO Declaration) at http://www.unhchr.ch/html/menu3/b/d_ilo100.htm; INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR), Articles 2, 3, 7, 16, 17 at http://www.unhchr.ch/html/menu3/b/a_ceschr.htm; Convention on the Elimination of Discrimination Against Women (CEDAW), Preamble, Articles 2 (b),(c), (d),(e),(f) 11, 24, Part V at <http://www.unhchr.ch/html/menu3/b/e1cedaw.htm>; Fourth World Conference on Women Action for Equality, Development and Peace Beijing Platform for Action (Beijing Platform), Paras. 4, 5, 41, 45, 165 (a), 166 (l), 175 (k), 178 (a),(c),(h),(l),(k),(o) at <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>; Fourth World Conference on Women Action for Equality, Development and Peace Beijing Declaration (Beijing Declaration), Paras. 7, 20 at: <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>; United Nations, A/RES/S-23/3 Further actions and initiatives to implement the Beijing Declaration and Platform for Action-Outcome Document . (Beijing +5 Resolution), Paras 82(h) at: <http://www.un.org/womenwatch/daw/followup/ress233e.pdf>; United Nations, International Covenant on Civil and Political Rights (ICCPR), Article 3 at http://www.unhchr.ch/html/menu3/b/a_ccpr.htm.

(a) Pay Equity adds Value to Businesses and the Economy

Women's work and pay are key to sustaining the global economy with rising women's work force participation and the importance of unpaid reproductive and care work. Sustainable economic growth, poverty reduction, the Millennium Development Goals and pay equity are all inextricably interlinked. The World Bank's 2006 Gender Action Plan calls on countries to harness the economic growth potential of the planet's women by rectifying the systemic labour market inequalities women face.³⁵ With businesses needing an efficient labour market, discriminatory barriers to the full productive use of half the world's labour supply is a massive inefficiency which needs to be rectified.³⁶ Maximizing human capital reduces such inefficiencies and increases productivity and profitability. Pay systems relying on actual levels of responsibility and skills motivate and retain skilled workers. Liability costs and risks of human rights violations are reduced. This builds consumer, investor and shareholder confidence.³⁷

(b) Pay Equity Benefits Women, Families and Communities

Securing pay equity breaks the discrimination cycle and challenges the systemic prejudices and practices that lead to women's inferior social/economic/political position. The revaluation process and the results – greater pay - empowers women and changes economic and power dynamics in work, homes, communities. It also reduces women's vulnerability to violence and exploitation and contributes to social inclusion and quality public services. Social protection strategies increasingly focus on incorporating implementation of the ILO's core labour standards which includes Conventions 100 and 111.³⁸ Finding that markets in developing and developed countries are often exacerbating rather than correcting the problem, the Bank calls for pro-active, concrete equity planning to remedy the "inequality traps" which will otherwise "tend to reproduce themselves over time and across generations".³⁹ Increasing women's pay improves health and educational opportunities of girls and boys and reduces family poverty. The Bank's 2006 World Development Report highlights the ongoing global gender pay gap as part of the profound and increasing economic inequalities which are impoverishing not only women but children, families and communities.⁴⁰ The costs of inaction on the pay equity issue are high. With the equality debt owed to women increasing, for every year of inaction the cost of redress is higher, the damage inflicted by the discrimination is deeper and the systemic equality benefits fail to materialize.

IV. THE STATE OF PAY EQUITY COMPLIANCE

While most countries have ratified ILO Convention 100, many have not passed implementing laws or established effective enforcement institutions. The laws that are in place are often inaccessible to women who lack the resources to access the legal system. Many countries continue to only have equal pay for equal laws which do not meet the Convention 100 standard. As stated by the 2006 ILO report on Convention 100 implementation, the achievement of equal pay for work of equal value for the world's women remains "largely unattained".⁴¹ The 2003 ILO Time for Equality Report documented the world-wide continuing pay discrimination and the need to address the matter on an urgent basis. The European Commission's 2006 Report criticized

³⁵World Bank, WORLD DEVELOPMENT REPORT 2006: EQUITY AND DEVELOPMENT Washington, 2006 at 2 and World Bank, GENDER EQUALITY IS SMART ECONOMICS: THE WORLD BANK GENDER ACTION PLAN, Washington, 2006 at <http://siteresources.worldbank.org/INTGENDER/Resources/GAPNov2.pdf>.

³⁶World Bank. INTEGRATING GENDER IN THE WORLD BANK'S WORK - A STRATEGY FOR ACTION, Washington, 2002.

³⁷ See European Project on Equal Pay, *supra*, note 22.

³⁸Gordon Betcherman, Amy Luinstra, and Makoto Ogawa, Labor Market Regulation: International Experience in Promoting Employment and Social Protection. Washington, D.C.: The World Bank, 2002 and ILO, *supra* note 7

³⁹Id. and World Bank, GLOBAL MONITORING REPORT, MILLENNIUM DEVELOPMENT GOALS: STRENGTHENING MUTUAL ACCOUNTABILITY, AID, TRADE AND GOVERNANCE, World Bank,2006.

⁴⁰ILO *supra* note 4, Cornish, *supra* note 1.

⁴¹ Chicha, *supra* note 3

strongly the continuing wide pay gap.⁴² International institutions such as the World Economic Forum, the World Bank and others have all highlighted the serious consequences of failing to close the global gender pay gap.

1. Globalization and the New Precarious Labour Market

Traditional governance models which focus solely on formal economy “male work” are not working to provide decent work and pay equity for the diverse forms of women’s work along the labour market continuum.³⁴ Challenges include the expansion of the informal economy, proliferation of new forms of horizontal corporate organization (contracting, subcontracting and part-time work) constant work change, proliferation of precarious employment statuses; “individualized” and increasingly “informal” work relationships; declining trade union coverage and reduced state role with deregulation and free market focus. The increase in women’s self-employment or disguised employment, either in global production chains or in craft or small business enterprises has increased the number of women outside effective pay equity protection.⁴⁴ These factors are also intertwined with the complexity of systemic gender labour market discrimination which is also sustained by other intersecting discrimination in areas such education, health and reconciling of work and family.

2. Diverse Models of Pay Equity Implementation

The ILO has studied the pay equity implementation experience in six industrialized jurisdictions: Sweden, Quebec and Ontario (Canada), United Kingdom, Netherlands, France and Switzerland. The 2006 report by Marie Thérèse Chicha describes three different design models:⁴⁵ The first model studied used in Sweden, Ontario and Quebec is a pro-active legislative model that requires the identification of pay discrimination through a comparison between a female-dominated and male-dominated jobs for the same employer or the same establishment and an evaluation of these jobs using a non-discriminatory method of analytical job evaluation. This model, used in Ontario and Quebec, covers the public and private sector and requires companies, working together with any union, to adopt a pay equity plan. If discriminatory pay gaps exist, they must be rectified through pay adjustments within established time frames. It includes a specialized enforcement machinery, with a tribunal to hear complaints and an agency to provide technical support and training. The second model, described by the ILO report as the “equal opportunities” model and used in the United Kingdom and Netherlands is a complaint-based model which focuses more on the process of job evaluation rather than the result. The model does not require a structured sequence for achieving pay equity, nor that pay equity must be achieved in a specific time frame. The third model, used in France, using gender pay gap indicators focuses more on the productivity characteristics of female workers with limited measures that specifically target the discriminatory pay gap. France has recently enacted improved ERWEV measures.⁴⁶

There are also other mechanisms globally for pay equity compliance including: 1) Canada’s federal sector complaint-based ERWEV law; 2) Chile’s proposed amendment to its Labour Code requiring ERWEV and workplace process for complaints; 3) Collective bargaining for pay equity, eg. Singapore Tripartite Declaration on ERWEV; 4) Switzerland’s public procurement law requiring pay equity compliance. 5) Portugal’s pay equity job evaluation and bargaining in restaurant sector; and 5) the EU’s European Commission in the Roadmap for Gender Equality (2006-2010) which sets ERWEV as a priority strategy, focusing on supporting social partners to comply with the standard.⁴⁷

⁴² Commission of the European Communities, Report from the Commission to the Council, the European Parliament, the European Economic and social committee and the committee of the regions on equality between men and women. Brussels. COM. (2006) 71 final. (February 22, 2006).

⁴³ Judy Fudge, *supra* note 16. and Armstrong and Cornish *supra* note 2 ; Judy Fudge, Eric Tucker, & Leah Vosko, *supra*, note See Rubbery (2005) *supra* note 5

⁴⁴ Cornish (2007) *supra* note 2

⁴⁵ Chicha, *supra*, note 3; and see Cornish (2007) *supra* note 2.

⁴⁶ See EU Project on Equal Pay, *supra*, note 22.

⁴⁷ ILO, Manuela Tomei, “Equidad de género en la remuneración una experiencia pionera en Portugal, powerpoint presented to ILO Equal Pay For Work of Equal Value Seminar in Santiago, Chile, August 25, 2008. See www.oitchile.cl; ILO, 2007, *supra* note 2 ; EU Project on Equal Pay, *supra*, note 22.

V. LEARNING FROM GLOBAL EXPERIENCE

1. The Proactive Active Model

The above-noted ILO report finds the pro-active model the most effective, relying on the following features of that model: 1) the time-specific, detailed requirements for the steps to achieve pay equity results; 2) the requirement for a job evaluation methodology that focuses on how to estimate the pay gap between jobs of equal value and how to calculate the pay adjustments to be made; 3) the requirement to enact "compulsory, proactive legislation; and; 3) the provision of technical support and training by specialized bodies dedicated to pay equity.⁴⁸ The report found that compliance is low with model two and declines further with model three.

2. Canadian Pay Equity Experience - Achievements and Limitations

In provinces with pro-active laws, many women, particularly unionized public sector women, obtained significant pay equity adjustments. For example, a 2006 pay equity settlement gave 327,000 Quebec Government workers substantial pay adjustments and \$1.5 billion in back pay. In Ontario, 100,000 of the lowest paid public sector women working in predominantly female workplaces such as child care centres and nursing homes have received many hundreds of millions of dollars in pay equity adjustments payable on an ongoing annual basis as a result of two separate court cases to enforce their rights under Ontario's *Pay Equity Act*.⁴⁹ Even under Federal complaint-based law, some women workers received major settlements, but after costly and lengthy litigation. Canadian Federal Government paid about \$3 billion to its workers and Bell Canada's telephone operators received 2006 \$104 million pay equity settlement.⁵⁰ With a pro-active process, the process of achieving a new valuation for women's work has generally been an empowering one for women where women were able to participate in a process where the value of their work is being discussed and recognized.

Along with Quebec, Ontario is a leading enforcement example. The pro-active Pay Equity Act helped reduce the pay gap from 38% in 1985 to 29.5% now. Ontario pay equity plans implemented in the 1990s addressed much of the gap which existed then for mostly unionized and most public sector workers. The Government starting in the 1990's agreed to fund public sector adjustments. Unique "proxy" provisions were used to close the the pay gap in predominantly female public sector female workplaces such as child care centres.

However, it is important to acknowledge, at the same time as there have been many successes in Quebec and Ontario based on the mandatory, pro-active model, there continues to be substantial non-compliance, particularly in the non-unionized and private sector.⁵¹ Taking the example of Ontario, many women never received pay equity as their employers ignored the law and they had no union to fight for them. As well, employers hire increasingly fewer "employees", creating contractors to avoid legislated entitlements. The complexity of the process, employer resistance, sometimes leading to litigation to enforce rights often led to substantial delays in the achievement phase and many employers failed to maintain pay equity even if they initially achieved it. With employees in workplaces of 10 and under excluded from Ontario's law along with those who are self-employed, many women are outside of the law's protection and their numbers are increasing as work precarity increases. As well, making the job comparisons required by Convention 100 can be difficult with constantly changing work and workplaces and declining unionization. With government cutbacks to enforcement machinery funding and the funding of public sector pay equity adjustments, women have difficulty enforcing their rights.⁵² With 2008 the 20th anniversary of Ontario's law, it is time to revitalize pay equity enforcement to address the challenges of globalized workplaces. Ontario's Equal Pay Coalition, a civil society group is currently conducting a campaign focusing on bringing pay equity to those who have been effectively outside the scope of law, including women who are also disadvantaged by factors including poverty,

⁴⁸ Chicha, *supra* note 3.

⁴⁹ Cornish and Faraday (2004), *supra* note 8.

⁵⁰ Cornish, M. (2007) *supra*, note 2. Cornish and Faraday, *ibid*

⁵¹ Speech of Emmanuela Heyninck, Ontario Pay Equity Commissioner, Ontario Federation of Labour "Pay Equity Maintenance: Union Obligations and Liabilities, November 14, 2006, Toronto.

⁵² Cornish, (2007) *supra*, note 2.

race, Aboriginal status, ethnicity, age and disability.⁵³

VI. KEY LESSONS LEARNED, ISSUES TO CONSIDER AND SOME GOOD PRACTICES

1. The Equality Role of the State in Securing Pay Equity

The state is responsible for securing international pay equity standards. This is done through establishing a framework of effective and resourced laws, policies, institutions and supportive measures which will translate those standards into accessible justice mechanisms. With the widespread violation of women's pay equity rights, women need more rather than less state intervention.⁵⁴ The state's leadership role as a human rights "duty bearer" means they are held to the highest standards as employer and law and policy maker.

2. The Political Nature of Pay Equity

"economic systems which value profits often do so at the expense of female labour".⁵⁵

By increasing women's economic power and choices and empowering women, pay equity changes the balance of power and challenges the relatively privileged position of men and their work and the power of businesses and governments to underpay women's work. Despite the formal global consensus, when it comes to implementation, women are repeatedly faced with the argument that state action is not necessary as the free market will redress the gap. It is also argued that redressing their inequality is too costly or too complicated and therefore does not make good business sense or public policy. A sustainable pay equity mechanism should include a plan for implementing pay equity over a realistic time frame along with a civil society strategy for gaining political support and measures to address any backlash which occurs.

3. Mainstreaming Pay Equity into Labour Market Governance

National authorities and social partners are looking to new governance models which are capable of realizing women's labour and human rights entitlements.⁵⁶ This requires a reconsideration of the concept of a fixed and single "workplace" and who is an "employee".⁵⁷ Delivering equitable pay outcomes for women's work along the labour market continuum requires the right mix of tailored, country-specific systemic solutions to address women's unequal conditions of work and pay. As gender-based pay discrimination is the result of complex social interactions and deeply held sexist prejudices, pay equity mechanisms must confront the social, cultural and patriarchal stereotypes and restraints which label women's work as secondary or marginal and therefore less valuable than men's work.⁵⁸ Starting to recognize and value women's work will help to lessen the victimization and powerlessness which women experience in other aspects of their lives. Ultimately, long term changes in the value of women's work also require measures to address the discrimination women face in health, education, exposure to violence, conflict and poverty.⁹⁵

4. Mapping and Planning to Make Women's Work and Pay Visible and Valued

Achieving and maintaining pay equity for the diversity of women's work is a complex problem as the drivers

⁵³ See www.equalpaycoalition.org for resources and materials used in the 20th Anniversary Campaign.

⁵⁴ Armstrong and Cornish, *supra* note 2. Cornish and Faraday, *supra* note 8

⁵⁵ United Nations, Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, its Causes and Consequences, E/CN/4/1995/42, 22 November, 1994 and Armstrong and Cornish, *supra* note 2.

⁵⁶ ILO, THE EMPLOYMENT RELATIONSHIP, Report V(1), International Labour Conference, 95th Session 2006, International Labour Office, Geneva.; Fudge, *supra* note 16 and Armstrong and Cornish, *supra* note 2.

⁵⁷ UNIFEM, *supra* note 7

⁵⁸ ILO, THE QUALITY OF WOMEN'S EMPLOYMENT: A FOCUS ON THE SOUTH by Kanchana N. Ruwanpura. Decent Work Research Programme, International Institute for Labour Studies. Online: International Institute for Labour Studies, 2004 at <http://www.ilo.org/public/english/bureau/inst/research/crbien.htm>.

⁵⁹ Armstrong and Cornish *supra* note 2 and Cornish et al, *supra* note 5.

forging women's unequal pay are multi-faceted and inter-connected. There is a need to "diagnose" the national, local and enterprise or business context and circumstances. Women's and men's work and pay need to be mapped along the formal/informal labour market continuum to locate, compare and understand the different conditions of both women's and men's work and the discriminatory conditions which drive the undervaluation of women's work relative to men's at each point on the continuum. Such mapping also brings to the foreground the other systemic barriers women face such as reconciling work and family life and gender-based violence.⁶⁰ With women's work often invisible or discounted in the process of developing labour laws and norms, institutionalizing human rights tools such as "mapping" shines a light on the different conditions of men's and women's work and forms the human rights basis for raising the pay of women's work to that of men along that continuum. Based on the mapping data, pay equity and other equality mechanisms can be designed to address the needs of each set of women workers and the conditions which drive the undervaluation of women's work at each point on the continuum.⁶¹ Attached at Annex A are two charts outlining some initial steps for such a mapping process. Sex-disaggregated data is essential for this process. Working in consultation with women's voice organizations, plans can then be made to mainstream pay equity compliance by the many different actors and institutions which impact on women's pay.

5. Pro-Active Pay Equity Laws

Given the systemic nature of labour market gender discrimination and the limited available resources, a complaint-based model is generally ineffective and too slow to achieve significant equality results. With pay equity a fundamental human right, the state and others with equality responsibilities have an obligation to ensure that women can realize that right and pro-active laws are the best model for doing so.⁶² This includes providing pro-active guidance to enterprises, trade unions and other women's voice organizations about work comparison and evaluation techniques. The ILO has a forthcoming publication providing such guidance.

6. Role of Enterprises

Recognizing that women work for enterprises in a number of different relationships, there is a need for enterprises to pro-actively remove systemic gender discrimination from all the pay systems which drive the undervaluation of that work, including subcontracting terms. Within a framework of mandatory pay equity laws and policies, and working with women's representatives, enterprises can also take the lead in building a culture of pay equity compliance through establishing pay equity compliance business practices. This includes incorporating pay equity compliance in corporate social responsibility (CSR) mechanisms. The above-noted Chicha ILO Study reviews the use of CSR as a pay equity strategy, noting that most CSR mechanisms do not now refer in any explicit way to the need to secure pay equity.⁶³ However, some do refer to the ILO core labour standards which include Conventions 100 and 111. The Calvert Women's Principles explicitly include ERWEV and non-discrimination principles and apply them to women's waged and entrepreneurial work.⁶⁴

7. Role of Women's Voice and Collective Bargaining

Women's voice through unions or other organizations must be at the centre of identifying and implementing appropriate pay equity mechanisms. Given women's current income and power deficits, they often do not have the time, resources or information to assert their rights. Measures are necessary to enable women to exercise their collective bargaining and other labour rights and the right for their entrepreneurial voices to be heard and

⁶⁰Cornish (2007) *supra* note 2 ; Armstrong & Cornish, *supra* note 2; Cornish et. al. *supra* note 5

⁶¹Cornish et al. *supra* note 5.

⁶²Cornish, *supra* note 2 and Armstrong and Cornish, *supra* note 2.

⁶³ Chicha, *supra* note 3.

⁶⁴ Calvert Women's Principles - Available at <http://www.calvert.com/womensPrinciples.html>.

acted upon in economic-decision making.⁶⁵ The World Bank has recently underlined this role stating that “the collective organization of workers is one of the main channels for securing better and more equitable working conditions”.⁶⁶ The global union, Public Services International (PSI) has been carrying out for many years a world wide campaign entitled “Pay Equity Now” which operates in both developed and developing countries providing resources and training materials and assisting women and trade unions to mobilize and enforce their pay equity rights.⁶⁷ Ontario’s Equal Pay Coalition played a key role in lobbying for Ontario’s *Pay Equity Act* and mobilizing support for ongoing pay equity compliance.⁶⁸ Some of the most effective organizing of women’s voices to increase women’s pay has come from organizations of women entrepreneurs, such as SEWA in India.⁶⁹

8. New Directions - Bring Pay Equity to All Women’s Work

While pay equity implementation to date has focused on Convention 100 and formal waged work, there is a need for public policy to develop new mechanisms to deliver gender equitable pay all along the entire continuum of women’s work. The increasing “precariousness” of women’s work requires everyone to rethink existing pay equity strategies and laws and look at other existing labour market tools for their application to this issue. One approach is to take a more interactive approach to the scope of international pay equity standards. When Convention 100 is read with Convention 111 and CEDAW, it extends the legal obligations to eliminate pay discrimination to women in self-employment/own account work and to informal economy work, where Convention 100 job comparisons are difficult. This approach also targets the most disadvantaged women such as Aboriginal women, immigrant women, women with disabilities/HIV/AIDS and elderly women.

9. Pay Equity for Precarious Work

Bargaining for sectoral and national wages is one option. Centralized bargaining has traditionally tended to favour equality concerns. In the United Kingdom, in Australia, and in New Zealand, the decentralization of the industrial relations framework has had a negative impact on bargaining for gender equality, particularly for equality in remuneration.⁷⁰ The recent experience in Portugal with the implementation of a sectoral job evaluation process in the restaurant sector is being evaluated for its lessons for other sectors and countries.⁷¹ Minimum wage laws have also been a tool of pay equity campaigns dating back to the 1970's when they formed a key part of Ontario’s Equal Pay Coalition campaign.⁷² Increases in minimum wages in developing countries have improved women’s pay where the equalization of minimum rates occurred between men and women in sector-level collective agreements and where it established comparable wages across dissimilar and often sex-segregated workplaces.⁷³ In Chile, the Government introduced a phased-in minimum wage for household workers who are predominantly female. More recently, Public Services International has made the living wage part of its pay equity campaign worldwide. For poor women, pay equity is now seen more broadly as part of the overall struggle to promote economic and social rights.

⁶⁵Cornish and Faraday, *supra* note. 8.

⁶⁶ World Bank, WORLD DEVELOPMENT REPORT 2006: EQUITY AND DEVELOPMENT Washington, 2006.

⁶⁷See Public Services International website, www.world-psi.org/payequity for copies of the bi-monthly newsletter and the Pay Equity Resource Package.

⁶⁸ The Ontario Equal Pay Coalition is a group of community, business women groups and unions formed in 1976. See www.equalpaycoalition.org.

⁶⁹ Cornish et al. *supra* note 5. Cornish and Faraday, *supra* note 8.

⁷⁰ ILO, *supra* note 2, TIME FOR EQUALITY

⁷¹ ILO, Tomei, *supra* note 47. .

⁷²Armstrong and Cornish, *supra* note 2.

⁷³ Janine Rodgers and Jill Rubery Perspective: the minimum wage as a tool to combat discrimination and promote equality INTERNATIONAL LABOUR REVIEW 142:4 (2003) at 547.

8. Pay Equity for Self-Employment

With self-employed women such as own account workers, contributing family workers or women in cooperatives and micro-enterprises, pay equity mechanisms are needed to address the gender-based prejudices which infuse the low pay they receive for their labour, products or services⁷⁴ Successful strategies in this area could focus on closing the business income gap between men's and women's micro businesses. The World Bank Gender Action Plan includes support for affirmative action measures to support female micro-enterprise entrepreneurs to gain access to greater incomes. As well, this can include measures to provide women entrepreneurs with social protection, such as child care supports or health services. .

10. Enforcement and Monitoring

Effective enforcement means that the persons and groups who are discriminated against are empowered and enabled to achieve their equality rights found in equity laws and policies.⁷⁵ Pay equity laws and mechanisms must be participative and transparent. Pay equity compliance requires constant renewal and transformation to address the ongoing changing nature and conditions of male and female work and the structure and conditions of employers and the economy. Finally, and most critically for any legal framework, enforcement mechanisms must be accessible and resourced with complaint assistance so that vulnerable women workers can access their rights.⁷⁶

CONCLUSIONS - LOOKING TO THE FUTURE

Achieving and maintaining women's human right to pay equity helps to create the interrelated and interdependent set of systemic conditions necessary to achieve women's economic equality. Critical to the success will be a number of factors: 1) Promoting a wider understanding of global benefits of pay equity and costs of non-compliance; 2) The effectiveness of the leadership/human rights enforcement role of the State and social partners; 3) The mainstreaming pay equity compliance into labour market governance with accurate and gender-sensitive mapping and pay equity planning; 4) A pro-active mandatory compliance model with capacity building and support and accessible enforcement mechanisms, all with active women's participation; and finally, 5) new approaches to deliver pay equity to the full continuum of women's work. The efforts to secure pay equity rights will be most effective when they are part of the broader social dialogue about how best to bring the ILO standard of "decent work" to workers worldwide - specifically the creation of work that is productive in conditions of freedom, equity, security and human dignity.⁷⁷

⁷⁴ UNIFEM *supra* note 7

⁷⁵ ILO *supra* note 2, Cornish (2007) *supra* note 2

⁷⁶ Armstrong and Cornish, *supra* note 2 and Pat Armstrong, Lessons from Canada, research paper commissioned by the New Zealand Government for presentation at the Pay and Employment Equity for Women International Conference convened by the New Zealand National Advisory Council on the Employment of Women, Wellington, New Zealand, June 28-30,2004, at <http://www.nacew.govt.nz/conference2004/papers.html>.

⁷⁷ A FAIR GLOBALIZATION: THE ROLE OF THE ILO, REPORT OF THE DIRECTOR GENERAL ON THE WORLD COMMISSION ON THE SOCIAL DIMENSION OF GLOBALIZATION, International Labour Conference, 92nd Session, Geneva, 2004 and see <http://www.ilo.org/public/english/decent.htm>.

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