

“Securing Justice for Women’s Work

by Mary Cornish and Fay Faraday*¹

Labour markets world-wide deny women one of the most basic human rights – the right to non-discriminatory work and income. Systemic gender inequalities permeate all aspects of women’s work lives, including whether or not they have paid work.

Globalization has clearly opened some opportunities for women in more industrialized and developing countries to improve their position. But at the same time, in order to attract transnational companies and compete in the global production system, nation states have eased or refrained from legislating or enforcing labour and equality protections. The result has been structural adjustment programmes, privatization of public services, anti-collective bargaining laws and business-friendly export processing zones which further workers’ disadvantage. In this context, labour and human rights are often seen as a barrier to trade.

The international equality seeking community has spent many years working to develop legal instruments to meet this global equality crisis. As a result, at the level of principle international law has increasingly recognized that securing women’s labour and human rights is crucial to establishing sustainable social and economic development and security. But international labour and human rights law faces great challenges in making equality real for women in their daily lives.

Circling around the tensions between continuing systemic dynamics of sex discrimination and our emerging principled paradigm for securing engendered labour rights are the following three themes: a) firstly, the need to recognize that the labour market is heavily gendered and that widespread gender inequality continues to be entrenched in global labour markets. As a result what it takes to achieve labour justice for women is substantively different than what is required for men; b) secondly, the traditional core labour standards – the right to unionize, the right to collective bargaining, the right to be free of discrimination – are extremely important labour rights. But, for most of the world’s women they are not accessible. These traditional labour rights are structured on the model of standard male “good” jobs – steady, full-time, full-year production jobs based in the employer’s worksite. These good jobs are disappearing for both men and women workers. But these good jobs were never the dominant model for women’s work. In the new “feminized” global economy women’s jobs are often precarious, substandard, low wage, and often outside the formal economy. More gendered labour and human rights standards are evolving to provide the framework for future action. This paper reviews the key gender equality standards that represent the international consensus on the obligations of state actors and social partners; (c) thirdly, despite the growth in gendered labour and human rights standards, there continues to be gap

¹ Mary Cornish and Fay Faraday are partners at Cavalluzzo Hayes Shilton McIntyre & Cornish, a public interest law firm in Toronto, ON.

between our international law principles and women's labour market reality. As a result, securing gender justice in the labour market doesn't just require new and better labour laws. The new globalized labour law requires a fundamentally different multi-faceted, multi-disciplinary approach to building equality. This paper reviews some key issues to be addressed by policy makers, legislators and civil society to transform labour markets and deliver on the gender justice promised by our new international standards.

PART I: The Gendered Labour Market: World-wide patterns of inequality

The global labour market is marked by five significant trends which show that systemic gaps continue to exist between men and women workers. 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. These five trends are as follows:

1. More women are working for pay. Over the past 20 years, this shift has been linked to the expansion in export-led industrial development associated with globalization. Female wage labour participation varies widely from country to country but in less than half the world are women even approaching parity with men here: global average is 63:100; East Asia is 83:100; Middle East, North African and South Asia is 40:100.
2. Over the past 20 years, women's wages have improved gradually, yet nowhere have women achieved average wages which equal men's wages. Where the wage gap has closed this is at times due to a drop in male wages rather than an increase in women's.
3. Occupational segregation for men and women continues. Despite the first two trends, men and women continue to do different work in different workplaces. In this context, different for women is usually "bad". Within both the formal and informal economy, men dominate higher-paying "production" jobs and women dominate lower-paying "caregiving" or "home-based" or informal jobs. This sex segregation in work corresponds with a value system in which men's work is considered superior economically, socially and legally. 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".
4. Women continue to carry a double burden. They continue to balance the demands of paid work and the demands of unpaid care work in sustaining families and communities. This impacts on the economic choices that are available to women. Women's double burden and time poverty are 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.
5. Women's work is concentrated 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. Relative to work in the standard economy, work in the informal economy is a) highly vulnerable; b) with very low pay and irregular income; c) is excluded from legal and regulatory frameworks and d) lacks access to employee and social security benefits.

In 2003, about two-thirds of the female work force in the developing world (outside of agriculture) was through the informal economy. Many women engaged in this sector work in home-based work, street vending, and in the sex trade.

The ILO measures “decent work” by reference to whether work is available, freely chosen, productive, sustainable, equitable, secure and dignified. On these criteria, the number of women internationally who are engaged in “decent work” lags far behind that of the world’s men. 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 participation in decision making, career advancement and long-term employment stability.

PART II: International Labour and Human Rights Standards

International law instruments – both global and regional – have evolved over the past 50 years to recognize the systemic and multi-layered nature of women’s labour market discrimination. This is a very important development because it puts gendered labour reform squarely on the political and economic agenda.

In recognizing the systemic dynamics of discrimination, international instruments have become increasingly detailed, required national governments and workplace parties to take positive, proactive steps to establish substantive equality, and established reporting obligations and mechanisms for external monitoring.

They have also recognized women’s specialized needs as workers - see for example the ILO conventions on maternity protection, workers with family responsibilities, part-time work and home work. They have also recognized that women’s economic inequality is inextricably intertwined with social and political discrimination on the basis of sex and that the multi-faceted dynamics of sex discrimination require comprehensive and systemic remedies. The building blocks of a discriminatory labour market are so deep. Discriminatory labour conditions are sustained by discrimination in education, health, violence against women, political and social exclusion. As a result, documents like CEDAW and the Beijing Platform for Action point to the need for comprehensive change to build sustainable equality.

Even if you look just within the limited field of strictly labour rights, the remedies for sex discrimination must be comprehensive. They must encompass a) equal access to education; the foundation for workplace inequality begins early: for example, there are 120 million children worldwide who are denied an education and most of them are girls; in more than 45 countries fewer than 1 in 4 girls goes to secondary school; b) equal access to vocational training and retraining; c) equal access to employment opportunities; d) equal terms and conditions of work, promotion, evaluation; e) equal remuneration; f) the right not to be discriminated against due to pregnancy or family responsibilities and so on.

International labour law has transformed from a traditional focus on the regulation of male-dominated “standard” work to taking a more systemic, inter-disciplinary and inter-institutional approach that can address the social, political and economic roots of women’s labour market discrimination. Eleven principles can be distilled from the international instruments, reflecting 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.

It now operates from the understanding that a) women’s rights are human rights; b) that labour rights are human rights; and c) that equality at work is a basic human entitlement.

1. Labour market equality for women is a priority which warrants immediate attention and 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 for women in all aspects of life is a fundamental precondition for achieving a sustainable, just and developed society;
- 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;
- 3 Securing gender justice 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;
- 4 Women’s right to equal pay for work of equal value is a fundamental labour standard and human right of the highest priority;
- 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;
- 6 Governments have a legal obligation to apply a gender perspective in the creation and implementation of labour laws. They must ensure that women play an active role in this process;
- 7 Governments have a legal obligation to ensure and guarantee equality outcomes. As employers, they are held to the highest standards. Government must enforce adherence to workplace equality laws by public authorities and institutions;
- 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;
- 9 Achieving equality is connected with the operation of other fundamental labour rights, including freedom of association and the right to collective bargaining. The methods to achieve labour market gender equality must recognize that collective bargaining is an important mechanism to eliminate wage discrimination and to secure adequate work conditions. In 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;
- 10 Governments have a legal obligation to create effective enforcement mechanisms for ensuring compliance with international and national labour law standards. All labour complainants must have access to a competent tribunal that can: 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;
- 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.

PART III: Working for Change and Changing Work

Establishing these international gender equality standards reflects considerable progress. But efforts to secure gender justice are systematically undermined by the refusal, inability or lack of capacity of governments and institutions to implement the standards and the widespread inability of women to exercise these rights in their day to day lives.

The challenges for infusing domestic law with international law principles are great. In order to work for change and to change discriminatory patterns of work, the new globally informed labour law is equal parts labour law, human rights law and the building of sustainable democracy.

Approaching this from the civil society perspective, I'll just note briefly some of the kinds of guidelines and initiatives that are instrumental for moving forward to secure gender justice at work:

1. Structural Inequalities: Because gender inequality is so entrenched in the world's labour markets and in society at large, progress must be made on many fronts at the same time. 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.

2. 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 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. 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.

3. Gender Mainstreaming and Pro-Active Intervention: 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*. It is a principle that has been endorsed by Canadian governments – all law reform and policy development should be subject to a gender analysis. 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.

While gender mainstreaming requires that gender always be taken into account, it does not mean that government's should continue to have departments and ministries whose mandate is to overview the achieve of gender equality globally. Under the guise of "mainstreaming" gender equality, governments have at times eliminated funded gender specific policies and departments. By contrast the European Union's *Community Framework Strategy on Gender Equality (2001-2005)* pursues a dual track of both mainstreaming gender equality policy development but also maintaining discrete actions specifically targeted in a pro-active way at particular situations facing European women.

4. Taking on Patriarchal Values: There is a need to specifically acknowledge and address the dynamics of the social, cultural and patriarchal values and institutions which affect the perceptions of women and their work. Unless we do this 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. 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.

6. Actions for reform need to **target the Occupational Segregation of Women**. Affirmative action or employment equity measures and laws are necessary to attack the occupational segregation of women both horizontally and vertically. [example: ILO's International Programme on More and Better Jobs for Women]

7. Need to establish **Pay Equity Measures** including 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.

8. Reform needs to accommodate Women's Domestic, Community and Child Care Responsibilities. Labour laws and policies must recognize the links between family and work, must fairly distribute the costs and responsibilities of social reproduction among women, men and society and must adopt measures which accommodate for these social reproduction responsibilities. Parental leave policies are a way to acknowledge and cross-subsidize the economic costs of parenting which have historically fallen on women's shoulders. Supportive measures such as child care are needed to level the playing field for women.

9. 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 example, labour protections in this context may mean establishing measures to provide equitable access to micro-credit, marketing information and other entrepreneurial supports, providing informal economy workers with networking and educational opportunities which build towards self-reliance, independence and improved productivity.

10. Organizing Women Workers and Promoting Core Labour Standards: The growth of the information 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.

11. Empowering the Voices of Women

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.

12. 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.

13. Trade Agreements, IFIs and Transnational Corporations

National markets are significantly affected by international or regional trade arrangements, the demands 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 labour market policies and transnational agreements have been widely criticized for the lack of substantive labour and social protections. 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.

PART IV: CONCLUSIONS

Engendering the international labour law system is a complex multi-faceted process. 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 articulated in international law are implemented and secured at the national and local level so 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. These social 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. An engendered international labour law system will play a key role in bringing a measure of balance and equality to this struggle.