

The Legal Dimensions of Empowering Women in Global Labor Markets

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On June 12, 2007, the World Bank convened in Washington a Learning Dialogue on the Legal Dimensions of Women's Economic Empowerment. Bringing together Bank officials, development practitioners, and representatives from the ILO, the United National Population Fund, the Inter-American Commission on Human rights, the Dialogue explored the issue in the context of four markets - land, labor, product and financial. The Learning Dialogue considered the key legal empowerment issues and tools to enable the Bank to assist member countries to establish legal frameworks which will promote gender equitable markets. This article focuses on the issue of labor markets and also appends a detailed "Women's Labor Market Legal Empowerment Bibliography." See also "The Legal Dimensions of Empowering Women in Global Labor Markets" a Concept Paper prepared by World Bank consultant and Cavalluzzo Hayes Shilton McIntyre & Cornish lawyer, Mary Cornish to facilitate the Dialogue discussion.

Legal Empowerment of the Poor.

The World Bank's Gender Action Plan recognizes that making global labor markets work for women at the policy level and empowering women to compete in those markets at the agency level is key to their economic empowerment. The Bank's Legal Empowerment of the Poor initiatives (LEP) brings together the poverty and governance agendas. See Legal Empowerment of the Poor: Action Agenda for the World Bank by Ana Palacio, Bank General Counsel. <http://www1.worldbank.org/publicsector/NutsBolts/Palacio.ppt>. The UN-affiliated Commission on the Legal Empowerment of the Poor (CLEP) chaired by Hernando De Soto and Madeline Albright is the first global initiative to focus specifically on the link between exclusion, poverty and law and will report in 2008. See <http://legalempowerment.undp.org/>. The Commission's work highlights the critical role of legal empowerment in extending the rule of law so that poor and informal sector women workers can access the benefits of labor markets, secure their labor rights and reduce their vulnerability and poverty.

Why are Women's Labor Rights Important to their Empowerment?

Central to the discussion at the Learning Dialogue were two key recognitions: 1) The right to work and earn income without facing barriers based on one's sex is a well-established labor and human right which most countries, through International Labour Organization (ILO) and United Nations commitments, have agreed to legally enforce in their countries. As noted by

the 2007 ILO Global Report on Discrimination, "Equality at Work: Tackling the Challenges" the condemnation of discrimination in employment and occupation is almost universal today. (ILO, 2007 a); and 2) Sustainable economic growth will not take place without making visible and addressing the labor market inequalities women face worldwide.

The global Decent Work Agenda endorsed by world governments through the UN and the ILO also commits the world to work together to create decent jobs for men and women which are free of discrimination. Despite this, labor markets globally continue to deliver vastly different economic outcomes to men and women for their work. The World Economic Forum in its 2006 Global Gender Gap Report has detailed this labor market gap for over 115 countries representing 90% of the world's population. It concludes that just over 50% of the economic participation and opportunity gender gap has been closed for the 5 billion women working in these countries. Although no country has closed the gender gap, the Nordic countries (which also perform consistently high in the WEF's competitiveness ratings) come closest at 80%. With labor markets generating employment and governing the ground rules for women's economic participation as workers and producers, ensuring those rules deliver equitable outcomes for women and men is crucial.

Women's work, both paid and unpaid, formal and informal, is a central factor determining whether poor households can lift themselves out of poverty, given women represent approximately two thirds of the world's poor and labor is their main asset. Yet most women's work in developing countries lies outside the enforceable boundaries of current labor market laws, policies and social security mechanisms, with home-based work, wage work in agriculture and fisheries, domestic work and other informal work being the primary livelihoods for the majority of poor women in developing countries. Women's increasing share of non-agricultural wage employment is a Millennium Development Goal 3 indicator of gender equality progress.

While some progress has been made in reducing inequalities as reflected in the 2007 ILO Global Employment Trends Brief, deep seated gender prejudices and other constraints outlined in these Findings, hinder effective actions. At the same time, closing these gender gaps presents a key poverty reduction and development opportunity. As such, there is a growing and increasingly shared realization that systemic and targeted actions must be taken to translate women's labor "rights" into meaningful and practical changes to the lives of poor women workers.

There is a need to develop the right set of multi-faceted, gender-sensitive enabling laws and supportive policies and practices which will "provide the level playing field" for women. There is no single path to labor market gender equality and each country must chart its own engendered regulatory structure based on a "mapping" of the equality needs of the diversity of women's work along the continuum of informal and formal work. Changing the way the business of work is carried out so that it delivers more equitable incomes for women at all points of the formal/informal economy continuum is the world wide challenge for all stakeholders - governments, enterprises, trade unions, international development and financial institutions, women's representatives and civil society.

Issues Addressed by the Learned Dialogue

The Learning Dialogue was convened to help find ways to enable the Bank to best leverage its comparative advantage and assist member countries to develop effective legal and regulatory

frameworks which are capable of closing the gender gaps in labor markets. This included a focus on the following issues addressed in the Concept Paper:

- 1) The need to bring together the worlds of labor and human rights law and economics in order to develop the necessary partnerships for forging the intersecting legal and economic drivers of women's equality;
- 2) The labor market progress and persistent gender gaps which women continue to face in labor markets and the nature and dynamics of such gender-based discrimination. This includes the importance of equitable labor markets to poverty reduction and the gender impact of the globalized economy and trade and investment liberalization;
- 3) The various intersecting and interactive legal, economic and policy considerations involved in the Bank's contributions, given its mandate of poverty reduction;
- 4) Member countries' wide-ranging and systemic gender equality labor market legal obligations as a result of their ratification of international standards or ILO membership and their enactment of domestic labor market laws.
- 5) The compliance problem - what are the opportunities and challenges which face countries in developing or reforming the enabling labor market legal frameworks to address the diverse and precarious forms of poor women's employment in the formal and informal sector - this includes inadequate and inaccessible laws; balancing protection, security and flexibility and the costs of equality and inequality.
- 6) The role of state and non-state actors; and
- 7) The need to rethink labor market law and regulatory frameworks so they promote and secure gender equality for women's work.

Some Guiding Principles and Considerations

The following guiding principles taken from the above-noted Concept Paper can be drawn from the lessons learned to date in labor market governance for the future development of engendered labor market mechanisms and strategies:

- The state and others with equality responsibilities (enterprises and trade unions) have a mandatory obligation to take the necessary country specific and realistically operational measures to move towards securing for women their basic rights as workers on an equal footing with men.
- Achieving and maintaining pay and employment equity for the diversity of women's work is a complex problem as the drivers forging women's unequal conditions of work and pay are multi-faceted and inter-connected. Therefore, designing mechanisms to close the labor market gender gaps requires first a "diagnosis" of the national, local and enterprise or business context and circumstances;
- Steps should be taken to make visible and to value women's work and to confront the patriarchal constraints and prejudices which has privileged male work and undervalued

women's work;

- Inequities are a systemic problem and require proactive, systemic planned solutions aimed at transforming the identified discriminatory circumstances that are causing the pay and occupational gaps;
- There is no single solution and a variety of different mechanisms are required to address the diversity of women's waged work in the formal and informal economy, women's self employment and the problem of work which is not paid at all.
- Women's voice through their own organizations or trade unions must be at the center of the design of pay and employment equity mechanisms as women themselves often best understand the nature of discrimination against them and can assist in identifying the most promising solutions.
- Both state and non-state actors and social partners must be engaged in the pursuit of labor market gender equality.
- Mechanisms should be participative and transparent;
- Compliance requires constant renewal and transformation to address constantly changing nature and conditions of male and female work and changing structures and conditions of employers and the economy;
- Enforcement mechanisms should be accessible and resourced.

These principles are leading to a combination of "hard" and "soft" law approaches laws as codes of practice and conduct and consumer campaigns are increasingly important compliance tools. Active labor market policies are also a key tool with the need for programs to increase the number and quality of employment opportunities for vulnerable workers, including employment targets, job placement initiatives and expanding measures to include employment agencies.

Even with "hard" laws, there are now a variety of legal approaches including constitutional, civil, social welfare, criminal, general and specialized human rights laws, quotas, and employment equity measures. This includes consideration of the social citizenship model where rights and protections are tied to broader notions of work and society rather than individual employers. Employment equity or affirmative action laws and policies provide for proactive employment measures to identify the barriers equality seekers face. Effective enforcement also requires that all human rights complainants have access to an expert body that can address complaints and provide effective remedies and sanctions if required. This includes both administrative tribunals and expert and well-resourced labor inspectorates. Lastly, on-going timely monitoring, reporting and following-up are necessary to ensure the practical realization of women's labor rights and empowerment.

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