

ILERA 2015 - WORKSHOP PROPOSAL

Substantive equality for female workers and real and fictitious gains

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To be confirmed

"She was becoming herself and daily casting aside that fictitious self which we assume like a garment with which to appear before the world." Kate Chopin, "The Awakening"

Substantive equality remains elusive for women in the workplace

Author: Nicola Smit, NWU

Women workers have not reached the point where they can be said to participate freely and equally in the labour market. The fictional belief that equal treatment and equal opportunities exist for these workers in reality detracts from legal, policy, community and other interventions to empower women workers and to further self-fulfillment and promote their active participation in the workplace and society. There are several contributing factors to this state of affairs, including the fact that gender is often an intersectional ground of discrimination, women workers still make up the majority of those employed as atypical or non-standard workers and in certain sectors of work (e.g. garment workers, care workers, etc), and certain precarious conditions and ways of working (e.g. work in the informal economy) are often the entry point for many women workers into paid work.

Both labour law and human rights law have acknowledged the vulnerable position of women workers but seemingly without optimal results. Although a greater emphasis is placed on work-life balance, family responsibilities and the undesirability of stereotyping, the fact is that it remains the woman that is *de facto* the primary caregiver in most families, most single households with dependents are headed by women and a significant pay gap between women and men persists.

The promise of substantive equality therefore remains frustrated for many women workers. This raises the questions what can or should be done differently and who should take the responsibility for action in this regard. We discuss the development of grass roots activism at local workplaces, the renewed attention to the legal empowerment of vulnerable workers, in particular women workers in the informal economy and the unique problems and challenges associated with gender as intersectional ground of discrimination.

Women workers and grass roots activism at local workplaces within a global value chain

Author: Jean Jenkins, Cardiff University UK

In today's global garment sector, new constituencies of labour are being drawn into paid industrialised work outside the home for the first time. The garment sector is dominated by female labour and is today located in regions where the socio-economic status of women is low before they enter the factory gates. The very nature of their societal disadvantage makes women a relatively cheaper source of labour than men, and their reputation for being relatively more compliant and 'less troublesome' than male workforces – as well as more tolerant of monotonous work – is their main attraction for local employers within the global value chain (for example, Padmanabhan, 2012; Caraway, 2007; Jenkins, 2013). Thus, conditions of work remain generally poor (Locke et al, 2013) and social structures influence not only patterns of labour recruitment, but also characterise the methods used in the suppression of the expression of worker dissent (see Taylor et al, 2009: 23–25; also, Bhowmik, 2009: 134–135; Warouw, 2006: 194). In this sense, women's role in their society is replicated at the workplace, and in and of itself their economic activity may offer very limited forms of emancipation. However, despite the considerable personal risk involved, engagement in grass roots activism does offer women – and of course, men – the opportunity for self-fulfilment and a more prominent role in their local setting. This paper uses fieldwork with garment workers in Bangalore, India, to explore that reality on the ground, and highlights the interaction between workplace and community for the role of women workers in their local setting, as they create wealth within a global value chain.

References:

- Bhowmik, S. K. (2009), 'India: labor sociology searching for a direction'. *Work and Occupations*, 36 (2): 126–44.
- Caraway, T. L. (2007) *Assembling Women: The Feminization of Global Manufacturing*. Ithaca, NY and London: Cornell University Press.
- Jenkins, J. (2013) 'Organising Spaces of Hope: Union formation by Indian garment workers', *British Journal of Industrial Relations*, 51: (3), (623–643).
- Locke, R. M., Rissing, B.A., Pal, T. (2013), 'Complements or Substitutes? Private Goods, State Regulation and the Enforcement of Labour Standards in Global Supply Chains', *British Journal of Industrial Relations*, 51: (3), (519–552).
- Padmanabhan, Neethi, (2012), 'Globalisation Lived Locally: A Labour Geography Perspective on Control, Conflict and Response among Workers in Kerala', *Antipode*, 44: (3), 971–992.
- Taylor, P., D'Cruz, P., Noronha, E., and Scholarios D., (2009) 'Indian call centres and business process outsourcing: a study in union formation', *New Technology, Work and Employment* 24:(1), 19–39.
- Warouw, N. (2006) 'Community-Based Agencies as the Entrepreneur's Instruments of Control in Post-Soeharto's Indonesia' in *Asia Pacific Business Review*, Vol. 12, No. 2, 193–207.

Women in the informal economy

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Employment and its fundamental design, purpose and coverage have changed to the detriment of many workers. Non-standard work is increasing and new forms of work have emerged. Labour legislation was often drafted to protect employees in the traditional full-time employment paradigm and is currently inadequate to provide protection to workers in forms of non-standard employment. In many cases this is due to the restrictive interpretation of the definitions such as 'employee' and 'trade union'.

Data in South Africa indicates an increase in temporary employment, a decline in trade union membership and an increase in the informal economy. (Statistics South Africa 2014 *Quarterly Labour Survey* <http://www.statssa.gov.za/publications/statsabout.asp> [date of use 2 June 2014]) Workers in the informal economy are often subject to discrimination and exclusion. These workers are vulnerable, face great insecurities and are denied social justice.

Vulnerable groups (in particular women, children and migrants) are often found working in the informal economy. It is important to identify and analyse the scope of existing labour laws and selected social protection provisions and to provide ways, where appropriate, to extend existing legislative provisions to provide protection to these vulnerable women workers. The reform of existing labour laws and the establishment of innovative solutions will also require political support. The South African Constitution supports a concept of substantive equality that entails that an examination of the social and economic conditions of groups and individuals is important and substance triumphs over form. In recognising and realising substantive equality of these vulnerable workers, policymakers, legislators, trade unionists, civil societies and human rights institutions must engage to find innovative solutions to assist and support these vulnerable women. The concept of substantive equality for these workers can only become a reality when role players consider an integrated approach and the identity and the voice of these workers is strengthened. The empowerment of these workers will include access to opportunities for decent work, education, training, elimination of all forms of discrimination and the promotion of gender equality. Economic empowerment has been defined in terms of increased access to and control over resources and markets. (WIEGO <http://www.wiego.org> [8 December 2014]) The economic and legal empowerment of women in the informal economy is vital to their wellbeing and dignity and empowerment is an important tool in the reduction of poverty. Through the empowerment of these women, lives and livelihoods can be transformed. This transformation supports the notion of transformative constitutionalism in South Africa. Karl Klare has defined "transformative constitutionalism" under the South African Constitution as "a long-term project of constitutional enactment, interpretation, and enforcement committed (not in isolation, of course, but in a historical context of conducive political developments) to transforming a country's political and social institutions and power relationships in a democratic, participatory, and egalitarian direction. Transformative constitutionalism connotes an enterprise of inducing large-scale social change

through nonviolent political processes grounded in law (Klare "Legal Culture and Transformative Constitutionalism" (1998) 14 *South African Journal on Human Rights* 146 at 150).

Female workers in the informal economy are often engaged in under-recognised work. An ILO report in 2013 estimated that there is a minimum of 53 million domestic workers worldwide, however accurate data on domestic workers is uncommon and the real number may be higher (ILO Report 2013 *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* <http://www.ilo.org/globalpublications/books/WCMS> [date of use 20 March 2014]). A large percentage of these workers are women. When promoting gender equality it is vital for governments, civil society and others not to disregard the economic and social value of the work performed by these workers. The economies of their households and even communities often rely on the contribution of these workers.

This paper sets out to highlight the value and challenges in the economic and legal empowerment of women in the informal economy, whilst recognising and realising the substantive equality of these female workers.

Non-discrimination, age and women

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The focus of this presentation is on a critical examination of the content and development of EU age discrimination law, and the intersection of age and gender in this context.

EU age discrimination law has grown in importance in recent years, and its content and development is determined by a number of different legal sources, including Treaty provisions, the EU Charter of Fundamental Rights, the (2000/78/EC) Employment Equality Directive and an expanding case law from the Court of Justice of the European Union. The protection and inclusion of older and younger workers is a current key concern, not least in light of the rapidly ageing population, the economic crisis and high youth unemployment.

The current state of EU age discrimination law reflects its underlying – partly conflicting – human rights and economic rationales, respectively. The EU Charter of Fundamental Rights, and the right to equality, the right to non-discrimination and rights of the elderly, emphasise the human rights rationale. At the same time, the traditional role afforded to age in the organisation of labour markets and the design of labour laws is partly maintained and reflected in the broad scope for justification of age-related differential treatment, and age-related regulation and measures for younger and older workers.

The protection against age discrimination covers all chronological ages and both younger and older workers. Discrimination on grounds of age can be justified to a greater extent than discrimination on

other grounds. According to Article 6(1) of the Employment Equality Directive, differences of treatment on grounds of age do not constitute discrimination if they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary. The CJEU case law on age discrimination is expanding, and the great majority of cases have dealt with old-age discrimination. The CJEU seems to have developed different standards of justification.

The intersection between age and gender is important, as is the hitherto limited attention paid to intersectional perspectives on non-discrimination law within the EU.